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In the Supreme Court of the United States

OCTOBER TERM, 1968

LINDA Mc INNIS, a minor, by **CLOTEE Mc INNIS**, her mother and next friend, **MATTHEW V. BOWDEN**, a minor, by **MRS. FLORENCE JOHNSON**, his mother and next friend, **LAVERN SMITH**, a minor, by **BERNICE SMITH**, his mother and next friend, **KIMBERLY RAE COBLER**, a minor, by **RALPH COBLER**, her father and next friend, **MARK FIELDS**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **WILLIAM ALEXANDER**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **VIRGINIA RUTH SCRUGGS**, a minor, and **MRS. VIRGINIA SCRUGGS**, her mother and next friend, all suing as individuals and as representatives of persons similarly situated, and **Concerned Parents and People of the West Side**, suing in behalf of the members of the class,

Plaintiffs-Appellants,

vs.

RICHARD B. OGILVIE, Governor of the State of Illinois, **RAY PAGE**, Superintendent of Public Instruction of the State of Illinois, **ADLAI E. STEVENSON III**, Treasurer of the State of Illinois, **MICHAEL J. HOWLETT**, Auditor of the State of Illinois,

Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

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Department of Health, Education and Welfare, Office of Education, *Profiles in School Support* (1965) 8

Horowitz and Neitring, "Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State," 15 U.S.C.A. Law Review 787 (April, 1968) 15

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Meiklejohn, Alexander, "The First Amendment is An Absolute", 1961 Sup. Ct. Rev. 245 11

National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders,* Testimony of Superintendent Briggs of Cleveland, (U. S. Government Printing Office, Washington, D.C., March, 1968) 13

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Report of the Task Force on Education, *Education for the Future of Illinois* (1965) 12, 13

Report of the United States Commission on Civil Rights, *Racial Isolation in the Public Schools* (U.S. Government Printing Office, Washington, D. C., 1967) 8

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Silard, "Memorandum on Malapportionment in State Support of Public Education," Presented to the Potomac Institute Conference on School District Inequities, Washington, D. C. (November 8-9, 1968) 8

The University of Chicago Center for Policy Study, *The Quality of Inequality: Urban and Suburban Schools* (University of Chicago Press, Chicago) 8

Wise, *Rich Schools, Poor Schools,* (to be published by the University of Chicago Press, February 1969) 8

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Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

The Appellants, plaintiffs below, appeal from the order of the United States District Court for the Northern District of Illinois, Eastern Division (a three judge panel), dismissing their Amended Complaint. Appellants submit this Jurisdictional Statement to show that this Court has jurisdiction of this appeal and that the question presented is substantial.

OPINION BELOW

The opinion of the three judge District Court below is appended hereto as Appendix "A".

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. This is a class action for declaratory judgment and injunction brought under the Federal Civil Rights Act, 28 U.S.C. Section 1343, 42 U.S.C. Section 1983, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, on behalf of public high school and elementary school students in four school districts of Cook County, Illinois. Plaintiffs sought to declare invalid, and enjoin the operation of, Illinois statutes of general and statewide application establishing the public school financing system. This financing system, being based upon the arbitrary factors of wealth of the local school district and place of residence of the student, results in excessive variations among school districts as to per-pupil expenditures, thereby producing substantially unequal educational opportunity. A permanent injunction was sought to restrain defendants, the Governor,[1] Treasurer, Auditor and

[1] The new Governor, Richard B. Ogilvie, has been substituted for his predecessor, Samuel H. Shapiro, pursuant to Rule 25 (d) (1), Fed. R. Civ. P.

Superintendent of Public Instruction of the State of Illinois from distributing monies in reliance upon the statutory provisions referred to below.

2. The judgment of the three judge District Court below was entered on November 15, 1968. No rehearing was sought. Notice of Appeal to this Court was filed on December 13, 1968, in the United States District Court, Northern District of Illinois, Eastern Division.

3. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question by appeal is 28 U.S.C. Section 1253.

4. The case believed to sustain the jurisdiction of this Court is *Baker* v. *Carr,* 369 U.S. 186 (1962).

5. The validity of the following Illinois statutes is involved: Chapter 122, Sections 7-1, 7-2, 7-4, 7-27, 10-20, 10-20.3, 10-22, 10-22.14, 11-1, 11-5, 11-6, 11-9, 12-1, 12-9, 12-24, 17-1, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 17-9, 17-11, 18-1, 18-2, 18-8, 18-8.1, 18-9, 18-11, 18-14, 19-1, 19-2, 19-3, 19-8, 34-1, 34-18, 34-22.1, 34-22.2, 34-22.3, 34-22.4, 34-22.5, 34-22.6, 34-43, 34-52, 34-53, 34-54, 34-58, 34-62, 34-55, 34-73, Chapter 85, Sections 851, 851.2, and 851.3, Ill. Rev. Stats. (1967). These statutes are set forth in Appendix B hereto.

QUESTION PRESENTED ON APPEAL

Do the various Illinois statutes establishing the public school financing system violate the Equal Protection Clause of the Fourteenth Amendment because the system, being based primarily upon local school district wealth and pupil residence, necessarily results in substantially unequal educational opportunity?

STATEMENT OF THE CASE

Basis For Federal Jurisdiction in Court of First Instance. The three judge District Court had jurisdiction under 28 U.S.C. Sections 1343, 2201, 2281 and 2284.

FACTS

Since the court below granted defendants' motion to dismiss the Amended Complaint, we must take as true for present purposes the facts as alleged in the Amended Complaint.[2]

Article VIII, Section 1 of the Illinois Constitution of 1870 commands the Legislature to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." The Illinois Legislature's response has been a financing system of statewide applicability under which Appellant children are offered substantially unequal educational programs, facilities and services. (A.C., Para. 17).

Only about one-third as much money per child is spent upon Appellant children residing within Posen, Illinois (Cook County, Elementary Dist. No. 143½) as on children in other elementary districts. (A.C., Para. 15 and Appendix to A.C., Table I.) Less than three-fourths as much money per child is spent upon Appellant children residing within Chicago, Illinois (Cook County Unit Dist. No. 299) as on children in other unit districts. (A.C. Para. 15 and Appendix to A.C., Table III.) This disparity is compounded because a dollar spent in Chicago will purchase fewer educa-

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[2] Hereinafter, "A.C." refers to plaintiff's Amended Complaint, which is contained on pages 26 through 44 of the Certified Record on file with this Court. "Para" refers to paragraph. All Statutes cited are from the Illinois Revised Statutes (1967).

tional resources than in other areas of the state. (A.C. Para. 20 (b)).

As a direct result, therefore, there exist material disparities in the average level of educational attainment achieved by students in different school districts within the State of Illinois. Appellants attend schools with markedly inferior records of educational achievement. (A.C. Para. 18). Furthermore, a disproportionate number of Appellants do not possess the normal reading, mathematical and other skills for their respective age and grade level. (A.C. Para. 19). This causal relationship between expenditure per-pupil and educational quality was accepted by the lower court:

> Presumably students receiving a $1,000 education are better educated than those acquiring a $600 schooling. (Appendix A at 6-7.)

This inequality in educational opportunity necessarily results from the extreme disparity in the per-pupil tax base among the approximately 1,340 Illinois school districts. (Appendix to A.C., Tables I, II, and III.) These local school districts supply approximately 75% of all available revenue. (Appendix A at 4) School districts may levy a tax on all property within that district. Chapter 122, Sections 11-1, 11-5, 11-6, 11-9, 10-20, 10-20.3, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 17-9, 17-11, 34-1, 34-18, 34-43, 34-55, 34-53, 34-54, 34-58, and 34-62. In addition, the district may issue bonds to defray capital expenditures. Article IX, Section 12, Illinois Constitution of 1870; Chapter 122, Section 19-1 and Chapter 85, Sections 851, 851.2 and 851.3 and Chapter 122, Sections 11-6, 11-9, 10-22, 10-22.14, 19-2, 19-3, 34-55 and 34-22.1 through 22.6, 17-9, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, limit the maximum indebtedness—expressed as a percentage of the property base—and the maximum tax rate

for the several educational purposes. Article IX., Section 12, Illinois Constitution of 1870; Chapter 85, Sections 851, 851.2 and 851.3; Chapter 122, Sections 19-1, 34-1, 34-22.1 through 22-6, 17-9, 17-2, 17-2.1, 17-2.11, 17-2.2, 17-2.3, 17-3, 17-4, 17-5, 17-5.1, 34-53, 34-54, 34-58, and 34-73.[3]

State funds provide only approximately 20% of available revenue, and may be used only to defray current operation expenditures. Chapter 122, Section 18-9. A "flat" grant of $47 per elementary student and $54 per high school student is given to every district. Chapter 122, Section 18-1, 18-2, and 18-8 (1), 18-11, 18-14. An "equalization" grant is distributed to the poor districts. The amount of that grant is $400 per pupil, minus revenue that would be obtained if the district taxes at a specified low qualifying rate, and minus the "flat" grant. Chapter 122, Section 18-1, 18-2 and 18-8 (2), 18-8.1, 18-9, 18-11, 18-14. Thus, every district which does, in fact, levy the qualifying rate is assured of at least $400 per student.[4]

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[3]The power of districts with over 500,000 population—only the Chicago district — to tap local resources is even more restricted. The maximum tax rate is ½ or less than that allowed any other unit district. compare Chapter 122, Section 17-2. 17-2.2. 17-3. and 17-5 with Section 34-53 and 34-54. The Chicago district may not tax for certain purposes for which other districts may tax. compare Chapter 122, Section 18-1, 18-2 and 18-8 (2) 18-8.1, 18-9, 18-11, 18-14. 17-2. 17-2.1. 17-2.11. 17-2.3. 17-4. The Chicago district's maximum indebtedness is fixed at $375,000,000. Chapter 122, Sections 34-22.1 through 34-22.6.

[4] Miscellaneous state and local programs provide a small amount of additional revenue (A.C. Para. 13). Most of this revenue is earmarked for special purposes such as bus transportation, school lunches, and assistance to educationally gifted children. The expenditure of these funds does not materially alter the above disparities and is not challenged in this lawsuit.

REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

> *Today, education is perhaps the most important function of state and local governments.* Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. *It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship.* Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. *Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954) (emphasis added).

Thus, the right to "equal educational opportunity" is constitutionally protected. It is vital that this Court more fully define this right in the context of invidious discrimination on grounds other than race.

The educational needs of those children residing in the poorer school districts and the oppressive injustice of the present system make it imperative that this Court reverse the judgment of the court below. The urbanization of American society, with increasing areas of high density population, often Negro, has under the local school district financing system produced substantial disparities in the quality of education:

> Since the early 1960's when as a nation we discovered urban poverty, unprecedented energies have been directed toward obliterating the disadvantages suffered by the citizens of our ghettos. One of the areas which has been illumined by the recent effort is the nationwide pattern of *underfinanced public education for children in the poorer urban and rural neighborhoods.*

> It now appears that children in some school districts within a state are receiving education supported by only one-third or one-fourth the expenditures for children in the wealthier locations. The public school child in the ghetto is thus getting a public education far inferior to that provided to the child in a wealthier suburb. John Silard, *Memorandum On Malapportionment in State Support of Public Education*, presented to the Potomac Institute Conference on School District Inequities, Washington, D.C. (November 8-9, 1968).[5]

Moreover, this case is worthy of this Court's plenary consideration because of the clear presentation of the Constitutional issues raised by the Illinois public school financing scheme and the pendency of similar litigation. Although most states have public school financing schemes similar to that of Illinois, in that they are essentially based upon local school district taxation, the Illinois scheme presents the constitutional issues in sharp focus. The large number of districts, approximately 1,340, exaggerates the disparity in per pupil assessed property valuation, and consequently, in expenditures per pupil. In addition, the percentage of state contribution is smaller than that of all but three states. Illinois Education Association, *Lessons in Illinois Public School Finance*, p. 4 (Springfield, Illinois, 1962). Finally, the flat grant is included in the computation of the equalization grant, thereby vitiating its value. As even the court below conceded, the Illinois scheme is one in which "the inequalities of the existing arrangement are readily apparent" (Appendix A at 7).

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[5] See, generally, Benson, *The Cheerful Prospect* (Houghton-Mifflin, 1965) Chapter 2; *Racial Isolation in the Public Schools* (Report of the United States Commission on Civil Rights, 1967) pp. 25-31; *Profiles in School Support* (HEW, Office of Education, 1965), pp. 70-74; *The Quality of Inequality; Urban and Suburban Public Schools*, (The University of Chicago Center for Policy Study, 1968); Wise, *Rich Schools, Poor Schools* (to be published by The University of Chicago Press, February, 1969).

Furthermore, as a result of the inequities of most present financing schemes, other cases of a similar nature have arisen throughout the country in both Federal and State courts. Thus, the lower court's opinion is likely to be determinative of similar pending suits in Virginia,[6] Texas,[7] Michigan[8] and Oklahoma,[9] as it already has been in California,[10] where demurrers were sustained to plaintiff's complaint.

The District Court dismissed Appellants' Amended Complaint on two grounds; (1) the allegations of the Amended Complaint do not set out a violation of the Fourteenth Amendment and (2) the lack of judicially managable standards makes the controversy nonjusticiable. Appellants respectfully disagree.[11]

A. Violation of the Equal Protection Clause

The present test for determining whether the Equal Protection Clause is violated is set forth by Mr. Justice Black, speaking for the majority, in *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968):

> "[I]nvidous" distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the

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[6] *Burress* v. *Wilkerson*, Civil Action #68-C-13-H (W.D. Va.).

[7] *Rodriguez* v. *San Antonio Independent School District*, Civil Action #68-175-S.A. (W.D. Tex.)

[8] *Detroit Bd. of Education* v. *Michigan*, General Civil Action #103342 (Circuit Ct., Wayne County, Michigan; filed February, 1968).

[9] *Bd. of Education of Independent School District # 20* v. *State of Oklahoma*, Civil Action #68-99 (W.D. Okla.).

[10] *Serrano* v. *Priest*, # 938254 (Superior Ct., County of Los Angeles, California; filed August 23, 1968).

[11] In the district court, appellants argued that the Fourteenth Amendment requires compensatory education for disadvantaged children. That argument is abandoned here.

> State claims to be protecting, and interests of those who are disadvantaged by the classification.

The Illinois financing scheme fails this test.

1. Facts and Circumstances of the Law

It is unnecessary to decide whether a public school education is constitutionally required. It is enough to say that once a state has undertaken to provide such an opportunity, it is a right which must be made available to all on equal terms. *Brown* v. *Board of Education,* 347 U.S. at 493; *Hobson* v. *Hansen,* 269 F. Supp. 401 (D.D.C. 1967), *aff'd* sub nom, *Smuck* v. *Hobson,* ..... F.2d ....., 37 U.S.L. Week 2426 (D.C. Cir., decided January 21, 1969); *Gaston County* v. *United States,* 288 F. Supp. 678 (D.D.C. 1968) (3 judge court), *prob. juris. noted,* No. 701, 1968 Term, 37 U.S.L. Week 3247, January 13, 1969.

In *Brown,* the Court held that "separate educational facilities are inherently unequal." 347 U.S. at 495. And, in *Hobson* and *Gaston County, supra,* the Court found inequality *in fact* between white and black schools. Specifically, it was found that "proportionately less money has been spent on Negro education than on white" *Gaston County,* at 686; *Hobson, supra,* at 496. The natural result of this financial disparity was observed:

> A reasonable man might anticipate that this disparity between the expenditures for white and Negro pupils would manifest itself in statistics on respective educational levels by the two groups. *Gaston County, supra,* at 687.

In the instant case, the gross disparities in per-pupil expenditures among the various school districts are based upon the wealth of local school districts and the residence of the child. As a direct result of this method of financing, material disparities exist in the level of educational attainment achieved by students in different school districts. Appellants attend school with markedly inferior

records of educational achievement. A disproportionate number of Appellants do not possess the normal reading, mathematical and other skills for their respective age and grade level. (A.C. Para. 18, 19)

The factors of wealth and geography have repeatedly been held unconstitutional in classifying those who are to benefit from a state law, even where the Court found a "rational basis" for the use of these factors. Rational classifications based upon wealth were invalidated in *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963); *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966). Such discrimination is particularly invidious in public education where so often, especially in suburban communities, community wealth is a reflection of individual wealth. Thus, the economically and socially disadvantaged are given an inferior opportunity in that very area which is the chief prerequisite to upward mobility. This result, tending to create closed social classes, is antithetical to democracy. Citizens need a good education, as they need free speech and press, in order to exercise intelligently their right to vote and thereby participate in the democratic process. See, Meiklejohn, *The First Amendment is an Absolute,* 1961 Sup. Ct. Rev. 245, 263. This result is also antithetical to the very concept of public education: employing the wealth of the general society to educate the young.

Similarly, rational classifications based on place of residence have been held unconstitutional. *Gray* v. *Sanders,* 372 U.S. 368 (1963); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). "This does not necessarily mean that . . . [the] plan is irrational . . . . We conclude simply that . . . [the] plan is impermissible for the States under the Equal Protection Clause . . ." *Reynolds, supra,* at 575. In education, as in voting, the state must adequately compensate for differences in population density when creating districts. This

has not been done. *Education for the Future of Illinois,* A Report of the Task Force on Education (1965) (herein after cited as "Task Force Report".)

2. The Interests of the Disadvantaged Children

The rights of disadvantaged criminal defendants, voters, and those exercising free speech have received special protection from this Court. *Griffin* v. *Illinois, supra; Douglas* v. *California, supra; Harper* v. *Virginia Board of Elections, supra., Reynolds* v. *Sims, supra, Carrington* v. *Rash,* 380 U.S. 89 (1965); *NAACP* v. *Button,* 371 U.S. 415 (1963). The right of students to equal educational opportunity deserves similar special protection. Free speech and voting are at the heart of the rights and responsibilities of citizenship; but education is the best guarantee of political participation and the wisdom of the vote. *Gaston County, supra; Brown* v. *Board of Education, supra.* Imprisonment is an intense and compulsory deprivation of liberty for a few; an inferior public education is a compulsory deprivation for many of that opportunity without which no "child may reasonably be expected to succeed in life . . . ." *Brown, supra* at 493. Moreover, courts have traditionally played a special role in the protection of minors. *Ginsberg* v. *New York,* 390 U.S. 629 (1968); *In re Gault,* 387 U.S. 1 (1967); *Prince* v. *Commonwealth of Massachusetts,* 321 U.S. 158 (1944).

The interests of the students and the interests of the state merge with respect to the importance of a quality education. As set forth in the Report of the National Advisory Committee on Civil Disorders:

> Many of those whose recent acts threaten the domestic safety and tear at the roots of American democracy are the products of yesterday's inadequate and neglected inner-city schools. The greatest unused and underdeveloped human resources in America are to be found in the deteriorating cores of America's urban centers. Testimony of Paul W. Briggs, Superintendent of Schools, Cleveland, Ohio, before the National

Advisory Commission on Civil Disorders, Report of the National Advisory Commission, p. 236 (Wash., D.C., 1968).

3. The Interests of the State

The myth of "local option" or "local control," to which the lower court subscribes (Appendix A at 10-11) should not magically shield the realities of the present financing system from judicial scrutiny. To argue seriously that a school district has control over the quality of education therein is fallacious, when one school district is not able to raise more than $400 per pupil even if taxing at the highest legal rate, while another district raises $1000 per pupil even if taxing at substantially less than the highest legal rate.

The direct relationship between per pupil assessed valuation of property and expenditures per pupil is clear. (Appendix to A.C., Tables I, II, III. See also *Task Force Report.*) That relationship persists even though the parents and neighbors of the less fortunate children have taxed themselves at high rates. Moreover, many districts have a tax base inadequate to support a public school system. (*Task Force Report*). *The hard facts are that the quality of education is controlled by the fortuity of the size of the tax base.*

Local experimentation is hindered. Districts with the least need to experiment may receive the most funds; districts with the greatest need may receive the least. This is dramatically illustrated in the Chicago district. Despite the recognition of local officials of the great need to restructure organization, physical plant and the curriculum, and despite the willingness of Chicagoans to tax themselves at the maximum legal rate, that district will soon be forced to increase its student-teacher ratio considerably.

Statement of Dr. James Redmond, Chicago School Superintendent, before the School Problem Commission of the State of Illinois, January 24, 1969.

Nor can the "local control" argument justify the invidious effect of the flat grant. Assume that at the qualifying tax rate, an elementary school district with a high per pupil assessed valuation of property can raise $1000 per pupil, while another elementary district with a low assessed valuation per pupil can only raise $200 per pupil. Because the flat grant of $47 per pupil is counted toward the $400 minimum, the wealthier district would receive $1,047, whereas the poorer district would receive only $400: [$200 + $47 + ($400 — $247) = $400] Chapter 122, Section 18-8(2). The poorer school district, in effect, receives no flat grant at all, while the wealthier district receives a bonus.

Thus, there is no meaningful local control over financing in the poorer school districts. On the other hand, acceptance of the Appellants' position does not preclude local control over all other school functions such as hiring personnel or planning curriculum. As discussed below, local control in this more meaningful sense might well be enhanced.

B. Less Onerous Alternatives

Appellants also contend that the importance of education to the welfare of individuals requires invalidation of the Illinois financing system if there are less onerous alternatives which do not base the quality of educational opportunity on the arbitrary factors of local school district wealth and pupil residence. Where individual interests have been deemed worthy of special protection, the availability of those less onerous alternatives invalidates the statute. *Shelton* v. *Tucker,* 364 U.S. 479 (1960) (First Amendment); *NAACP* v. *Button, supra,* (First Amend-

ment); *Carrington* v. *Rash, supra,* (voting rights); *Green* v. *County School Board of New Kent County,* 391 U.S. 430 (1968) (education).

A number of alternatives have been suggested:

> One [alternative] is to district on a more functional basis, for example, by creating districts with substantially equal tax bases. . . . Or the state can adopt a system of equalization by means of varying state grants which would bring about substantial equality in available resources among districts. Or the state can levy all taxes for the support of schools on a statewide basis, allocating funds to local districts by a formula which will result in substantial equality among districts. Horowitz and Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State,* 15 U.C.L.A. L. Rev. 787, 810-11 (April 1968).

Professor Coons has suggested a novel alternative. The state would establish a schedule of support for both current and capital expenditures, guaranteeing that any local unit levying the prescribed tax rate will have available the prescribed number of dollars per pupil and no more. Coons, *Private Wealth and Public Education* (to be published by the Harvard University Press; Fall, 1969). For example:

Local Tax Rate	*Level of Support*
½%	$300/pupil
1%	$450/pupil
1¼%	$550/pupil
1½%	$650/pupil
3%	$900/pupil

If the local tax rate produced more than the corresponding level of support, the excess would be turned over to the state. That excess and other state monies would then be distributed to those local units not raising the prescribed level of support.

Therefore, the court below is incorrect when it states:

> The *only* possible standard is the rigid assumption that each pupil must receive the same dollar expenditures. (Appendix A at 17). (emphasis supplied)

This misconception accounts in part for its determination that the controversy is not justiciable.

C. The Controversy Is Justiciable

As the second ground for its decision, the district court points to the alleged lack of "discoverable and manageable standards" and the difficulty in fashioning adequate remedies. (Appendix A at 16-17). But courts have long fashioned standards of judicial scrutiny and long possessed skill in finding a denial of equal protection:

> Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar. . . . *Baker* v. *Carr,* 369 U.S. at 226.

Factors which courts have considered in assessing equal educational opportunity include the number and prominence of the faculty, size of the student body, size of the library, the availability of extra-curricular activity, median per pupil expenditures, condition of school buildings, availability of text books, teacher experience, average teacher salary and even reading scores and aptitude tests. *Hobson* v. *Hansen, supra; Gaston County, supra; Sweatt* v. *Painter,* 339 U.S. 629 (1950). Indeed, in *Hobson,* the court passed upon the sophisticated problem of the validity of a track system based upon educational testing.

The standards for the determination of a denial of equal protection in the context of education are discoverable and manageable when the classification is based on race, as the district court observed:

> Similarly, *Hobson* v. *Hansen*, 269 F. Supp. 401 (D.D.C., 1967) struck down *variations in expenditures* because the classifying factor was race. (Appendix A at 14) (emphasis supplied)

No reason is apparent why these standards should not be equally discoverable and manageable when the classification is based on wealth and geography. In both cases, the "variations in expenditures" result from invidious classifications. And where the Court deems it wise not to spell out any precise constitutional standards, "developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements. . . ." *Reynolds* v. *Sims*, *supra* at 578; See also *Brown* v. *Board of Education*, 349 U.S. 294 (1955).

An equal per pupil expenditure would not necessarily be required. Mathematical variations would be permissible. *Reynolds, supra.* Variations which relate to a legitimate legislative goal would also be permissible:

> So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible . . . . *Reynolds* v. *Simps, supra* at 579.

Thus, differences resulting from added expenditures for educationally deprived or gifted children would be permissible; arbitrary differences based on wealth and geography, as presently exist, are not.

Nor would a court experience difficulty in fashioning an adequate remedy. But more important, this Court need not deal at this time with the question of appropriate remedies. Commenting on the analogous case of *Baker* v. *Carr*, this Court has said, in *Reynolds* v. *Sims*, 377 U.S. at 556:

We intimated no view as to the proper constitutional standards for evaluating the validity of a state legislative apportionment scheme. Nor did we give any consideration to the question of appropriate remedies. Rather, we simply stated:

> "Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial."

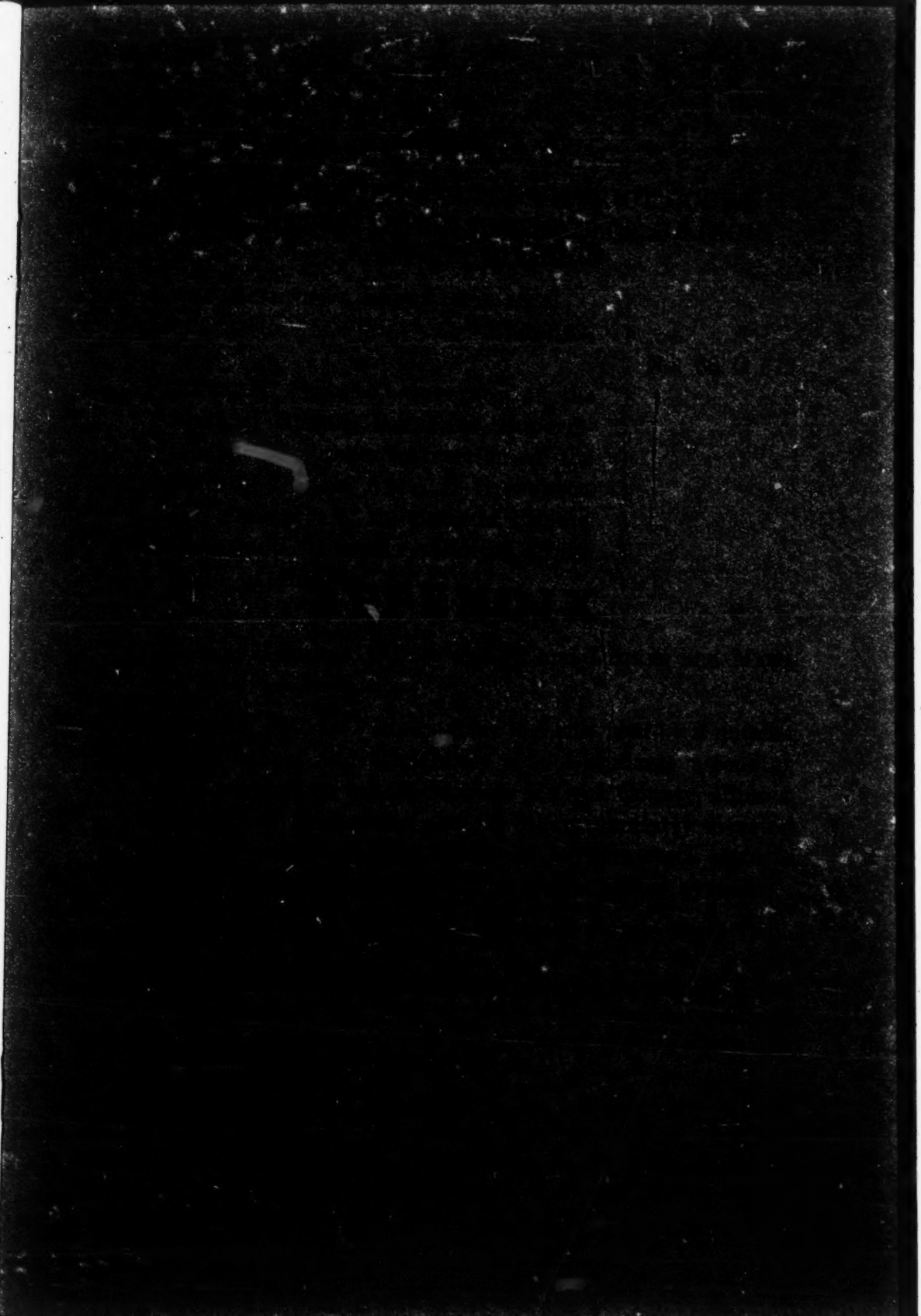
CONCLUSION

For the reasons stated above, probable jurisdiction should be noted or, in the alternative, consideration of the issue of jurisdiction should be postponed until the hearing on the merits.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINDA McINNIS, a minor, etc., et al.,	)	
Plaintiffs,	)	
vs.	)	No. 68 C 673
SAMUEL H. SHAPIRO, Governor of the State of Illinois, RAY PAGE, Superintendent of Public Instruction of the State of Illinois, ADLAI E. STEVENSON III, Treasurer of the State of Illinois, MICHAEL J. HOWLETT, Auditor of the State of Illinois,	)	
Defendants.	)	

Before HASTINGS, *Circuit Judge*, and DECKER and MAROVITZ, *District Judges*.

DECKER, *District Judge*. This is a suit filed by a number of high school and elementary school students attending school within four school districts of Cook County, Illinois, on behalf of themselves and all others similarly situated challenging the constitutionality of various state statutes dealing with the financing of the public school system.[1]

Plaintiffs claim that these statutes[2] violate their four-

[1] There is also a corporate plaintiff, Concerned Parents and People of the West Side, which was organized to improve the quality of educational facilities available to the citizens of an area within Chicago popularly known as "Lawndale."

[2] Specifically, the students challenge the following parts of 1967 Ill.Rev.Stat. ch. 122: §§ 11-1, 11-6, 11-9, 18-1 through 18-4, 18-8 through 18-14, 29-5, 34-22 through 34-29, and 34-42 through 34-82. Also questioned are ch. 122, articles 17, 19, and 32, and ch. 85 §§ 51 through 51.6.

teenth amendment rights to equal protection and due process because they permit wide variations in the expenditures per student from district to district, thereby providing some students with a good education and depriving others, who have equal or greater educational need. Plaintiffs claim to be members of this disadvantaged group.

To correct this inequitable situation, they seek a declaration that the statutes are unconstitutional and a permanent injunction forbidding further distribution of tax funds in reliance on these laws.

The defendants are state officials charged with the administration of the legislation which allegedly permits this discrimination.

A three-judge district court was convened pursuant to 28 U.S.C. §§ 2281 and 2284. Defendants then moved to dismiss the complaint (1) for lack of jurisdiction and (2) for failure to state a cause of action.

We conclude that we have jurisdiction. After examining the complaint, and studying the extensive briefs filed by the respective parties as well as the brief of the amici curiae,[3] we further conclude that no cause of action is stated for two principal reasons: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational

[3] The following five organizations filed a brief in support of the complaint as amici curiae: American Jewish Congress, League of Women Voters of Illinois, South Suburban Human Relations Council, National Association of Social Workers, and Inter-Community Programs, Inc.

needs,[4] and (2) the lack of judicially manageable standards makes this controversy nonjusticiable. After explaining the structure of the existing Illinois legislation, this opinion will discuss these two conclusions in detail.

I. Jurisdiction

The federal courts have jurisdiction over the subject matter of this controversy. As stated in *Baker* v. *Carr*, 369 U.S. 186, 200 (1962):

> "Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts."[5]

Similarly, the allegations do not present a political question because there is no potential conflict between coordinate branches of the federal government.[6] Both the

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[4] While the complaining students repeatedly emphasize the importance of pupils' "educational needs," they do not offer a definition of this nebulous concept.

Presumably, "educational need" is a conclusory term, reflecting the interaction of several factors such as the quality of teachers, the students' potential, prior education, environmental and parental upbringing, and the school's physical plant. Evaluation of these variables necessarily requires detailed research and study, with concomitant decentralization so each school and pupil may be individually evaluated. See pages 14 & 23-4 *infra*.

[5] See also *Bell* v. *Hood*, 327 U.S. 678 (1946); *Colegrove* v. *Green*, 328 U.S. 549 (1946).

[6] "[I]t is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal juridicary's relationship to the States, which gives rise to the 'political question.'" 369 U.S. 210. See also *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). But see *Coleman* v. *Miller*, 307 U.S. 433 (1939).

equal protection and the due process clauses have long been used to scrutinize state legislative action. See, *e.g.*, *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488-9 (1955).[7]

II. The Financing of Illinois' Public Schools

The General Assembly has delegated authority to local school districts to raise funds by levying a tax on all property within the district. In addition, the school districts may issue bonds for constructing and repairing their buildings. Legislation limits both the maximum indebtedness and the maximum tax rate which localities may impose for educational purposes. In 1966-67, the approximately 1300 districts had roughly $840 per pupil with which to educate their students, of which about 75% came from local sources, 20% was derived from state aid, and 5% was supplied by the federal government. Since the financial ability of the individual districts varies substantially, per pupil expenditures vary between $480 and $1,000. State statutes which permit such wide variations allegedly deny the less fortunate Illinois students of their Constitutional rights.

Article VIII, section 1 of the Illinois Constitution requires the legislature to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." Accordingly, a state common school fund supplements each district's local property tax revenues, guaranteeing a foundation level of $400 per student. The common school fund has two main components: (1) a flat grant to districts for each pupil, and (2) an equalization grant awarded to

[7] See also *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 322 (1959); *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563 (1910).

each district which levies a minimum property tax rate.[8] The equalization grant is calculated on the assumption that the district only assesses the minimum rate. Total revenues from the state common school fund account for about 15%-18% of all districts' income.

The local tax revenue per student which is necessarily generated by the preceding minimum rate[9] is added to the flat grant per pupil. If this sum is less than $400, the difference is the equalization grant. Therefore, every district levying the minimum rate is assured of at least $400 per child. On the other hand, if a locality desires to tax itself more heavily than the minimum rate, it is not penalized by having the additional revenue considered before determination of the equalization grant. Since the hypothetical calculation uses the same tax rate for all localities, the assumed revenue per child depends upon the total assessed property value in a district and the number of students. Thus, the equalization grant tends to compensate for variations in property value per pupil from one district to another.

Finally, numerous special programs, both state and federal, supply about 10% of the districts' revenues. This "categorical aid" is allocated for particular purposes such as bus transportation or assistance to handicapped and disadvantaged children. Plaintiffs do not challenge these

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[8] Over 97% of the districts qualify for the equalization grant. The flat grant, accounting for about one-third of the state aid, is now $47 per elementary student and $54.05 per high school pupil.

[9] Specifically, the qualifying rate is multiplied by the average assessed property valuation per pupil to obtain a minimum income from local taxation.

programs, conceding that they are rationally related to the educational needs of the students.[10]

III. The Fourteenth Amendment: Equal Protection and Due Process

The underlying rationale of the complaint is that *only* a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment.[11] Plaintiffs assert that the distribution of school revenues to satisfy these needs should not be limited by such arbitrary factors as variations in local property values or differing tax rates.

Clearly, there are wide variations in the amount of money available for Illinois' school districts, both on a per pupil basis and in absolute terms. Presumably, students receiving a $1000 education are better educated than

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[10] For a more detailed description of Illinois' public school financing, see generally Task Force on Education, *Education For The Future of Illinois*, ch. VII (1966).

[11] Although plaintiffs stress the alleged denial of equal protection, they seek relief resembling substantive due process. Surely, quality education for all is more desirable than uniform, mediocre instruction. Yet if the Constitution only commands that all children be treated equally, the latter result would satisfy the Fourteenth Amendment. Certainly, parents who cherish education are constitutionally allowed to spend more money on their children's schools, be it by private instruction or higher tax rates, than those who do not value education so highly. Thus, the students' goal is presumably a judicial pronouncement that each pupil is entitled to a minimum level of educational expenditures, which would be significantly higher than the existing $400.

those acquiring a $600 schooling.[12] While the inequalities of the existing arrangement are readily apparent, the crucial question is whether it is unconstitutional. Since nearly three-quarters of the revenue comes from local property taxes, substantially equal revenue distribution would require revamping this method of taxation, with the result that districts with greater property values per student would help support the poorer districts.

A. Social Policy

While the state common school fund tends to compensate for the variations in school districts' assessed valuation per pupil, variation in actual expenditures remains approximately 3.0 to 1, 2.6 to 1, and 1.7 to 1 for elementary, high school and unit districts respectively. Though districts with lower property valuations usually levy higher tax rates, there is a limit to the amount of money which they can raise, especially since they are limited by maximum indebtedness and tax rates. Plaintiffs argue that state statutes authorizing these wide variations in assessed value per student are irrational, thus violating

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[12] These figures probably understate the national discrepancies. See, *e.g.*, Levi, *"The University, The Professions, and The Law — An Address,"* 56 Calif.L.Rev. 251, 258 (1968).

"The average current expenditures in 1965 for the East South Central states was 354 dollars per pupil in the primary and secondary public schools. The comparable figure was 732 dollars in the Middle Atlantic states. . . . These discrepancies also occur . . . between suburbs surrounding a single city. For example, the expenditure per high school pupil in a suburb to the north of Chicago is 1,283 dollars; in a suburb to the south of the city it is 723 dollars. The expenditure per elementary school pupil in a northern suburb is 919 dollars; in a southern suburb it is 421 dollars."

See also National Education Association, *Rankings of The States, 1966*, page 51 (1966).

the due process clause. Moreover, under the equal protection clause, the students contend that the importance of education to the welfare of individuals and the nation requires the courts to invalidate the legislation if potential, alternative statutes incorporating the desirable aspects of the present system can also achieve substantially equal per pupil expenditures.[13]

Illustrating how the school financing could be improved, plaintiffs suggest two alternatives:[14] (1) all students might receive the same dollar appropriations, or (2) the state could siphon off all money in excess of $ x per pupil which was produced by a given tax rate, in effect eliminating variations in local property values while leaving the districts free to establish their own tax rate.[15]

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[13] Thus, the students advocate a doctrine similar to the close scrutiny given laws which infringe First Amendment rights. See, *e.g.*, *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967); *N.A.A.C.P.* v. *Button*, 371 U.S. 415 (1963).

[14] Plaintiffs' suggestions arguably go no further than the upheavels recently created by bussing pupils and redrawing district boundaries in order to achieve racial balance. Except where localities attempted to avoid *Brown* v. *Board of Education*, 347 U.S. 483 (1954), however, these changes were accomplished legislatively rather than judicially.

[15] For example, if a district only levied a 1% tax rate, it could keep only $400 per pupil, regardless of the absolute dollars produced. On the other hand, the state would also guarantee $400 per pupil to units imposing to 1%. At higher rates, such as 4%, the state would thus substantially aid districts with low valuations, deriving most of its funds from wealthy districts which produced far more than $400 per pupil by a 1% rate.

Without doubt, the educational potential of each child should be cultivated to the utmost, and the poorer school districts should have more funds with which to improve their schools. But the allocation of public revenues is a basic policy decision more appropriately handled by a legislature than a court. To illustrate, the following considerations might be relevant to a financing scheme: statewide variations in costs and salaries, the relative efficiency of school districts, and the need for local experimentation.

As stated in *Metropolitan Co.* v. *Brownell*,[16] 294 U.S. 580, 584 (1935):

> "[T]he burden of establishing the unconstitutionality of a statute rests on him who assails it . . . A statutory discrimination will not be set aside as the denial of equal protection of the laws if any statement of facts reasonably may be conceived to justify it."

And more recently, the Supreme Court declared that:

> "[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality."

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[16] In *Metropolitan Co.*, the Court upheld a state regulatory statute which distinguished between domestic and foreign casualty insurance companies, finding that differences in the security and collection of claims against the two groups may have justified differential treatment.

McGowan v. *Maryland*, 366 U.S. 420, 425-6 (1961).[17] See also *Salsburg* v. *Maryland*, 346 U.S. 545, 552-3, (1954).[18]

Tested by these standards, the existing school legislation is neither arbitrary nor does it constitute an invidious discrimination.[19] It therefore complies with the Fourteenth Amendment.

In the instant case, the General Assembly's delegation of authority to school districts appears designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools. Moreover, local citizens must select which municipal services they value most highly. While some communities might place heavy emphasis on schools, others

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[17] Sunday laws were sustained even though First Amendment rights were involved and despite the availability of less onerous alternatives for providing a day of rest and recreation.

[18] "We do not sit as a superlegislature or a censor.

. . .

"We find little substance to appellant's claim that distinctions based on county areas are necessarily so unreasonable as to deprive him of the equal protection of the laws guaranteed by the Federal Constitution.

" . . . Territorial uniformity is not a constitutional requisite." 346 U.S. 550-2.

[19] See also *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 527-8 (1959) (exemption of certain merchandise from state taxation upheld under the equal protection clause); *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563, 573 (1910): "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law."

may cherish police protection or improved roads. The state legislature's decision to allow local choice and experimentation is reasonable, especially since the common school fund assures a minimum of $400 per student.[20]

Plaintiffs stress the inequality inherent in having school funds partially determined by a pupil's place of residence, but this is an inevitable consequence of decentralization. The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using hypothetical calculation. Furthermore, the flat grants and state and federal categorical aid reduce the school's dependence on local taxes. While alternative methods of distributing school monies might be superior to existing legislation,

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[20] While condemning the present distribution system, plaintiffs concede the virtue of decentralization, as follows:

"Decentralized administration and decision-making are desirable for administrative and political reasons. A division of the state into local school districts is therefore necessary. The voters in any particular area are best able to weigh convenience, the desired degree of homogeneity in the student body, and other factors. These voters are the best able to draw school district boundaries. Once these boundaries are drawn, the administrators or residents of the district, being closest to the problem, are best able to determine the educational needs of the district's children. That decision takes the form of support for a certain tax rate. Sometimes, this decentralized decision-making in creating districts or in adopting a tax rate will result in insufficient distribution of educational services. When that occurs the state in recognition of its ultimate responsibility provides sufficient funds to purchase 'basic' education for each child. Four hundred dollars per pupil is the figure necessary to support a 'basic' educational program. Of course, any disadvantage is outweighed by the values of decentralized administration and decision-making."

> "To be able to find fault with a law is not to demonstrate its validity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. . . . Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the Fourteenth Amendment."

Metropolis Theatre Co. v. *Chicago,* 228 U.S. 61, 69-70 (1913).[21]

Plaintiffs also attack numerous details of the present legislative scheme, such as the uniform maximum tax rate for both elementary and high schools. Allegedly, high schools need more money than elementary schools; but the answer is the increased number of students attending high schools may provide the additional funds. Also, plaintiffs complain that the maximum tax rate for the City of Chicago is about half that for the remaining school districts. Since the city is so much larger than other districts, however, distinctive legislation is appropriate to adjust for potential efficiencies.[22] The maximum tax rates which plaintiffs object to were enacted to avoid another disaster such as that which struck certain localities during the Great Depression; the possibility of similar economic crises supports the statutory ceilings.

In each of the instances where particular statutory provisions have been criticized by plaintiffs we can find a legitimate legislative policy. Where differences do exist from district to district, they can be explained rationally.

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[21] Differential theatre license fees based on the price of admission, rather than one profit revenue, satisfied the equal protection clause.

[22] See, *e.g.*, *Latham* v. *Board of Education,* 31 Ill.2d 178, 184 (1964).

The charges made in the complaint fall short of demonstrating either an arbitrary exercise of legislative power or an invidious discrimination. Under these circumstances, there can be no denial of any Fourteenth Amendment rights.

Moreover, the legislature is constantly upgrading the quality of education. For example, the foundation level was recently revised from the 1965-66 level of $330 to the present $400. Also, the General Assembly has substantially consolidated the school districts, reducing the 11,955 which existed in 1945 to approximately 1,340 today. Recently a legislative study commission suggested that educational television be introduced in the schools and that the foundation level be raised to $435. See *Report of the School Problems Commission No. 9*, ch. I (1967); compare *Report of School Problems Commission No. 7*, p. 76-77 (1963).[23]

B. Plaintiffs' Legal Precedent

The complaining students rely upon recent Supreme Court decisions in the fields of school desegregation,[24]

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[23] In addition, the Task Force on Education, sponsored in 1966 by then Governor Kerner and the legislature's School Problems Commission, recently proposed a plan of state financial support whereby each elementary student would receive a minimum of $600 and each high school student $750. Task Force on Education, *Education For The Future of Illinois*, p. 113, 135 (1966). *Compare* McLure, *A Study of the Public Schools in Illinois* (1965).

[24] See, *e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Griffin* v. *County School Board*, 377 U.S. 218 (1964).

voting rights[25] and criminal justice.[26] Specifically, they contend that "equal educational opportunity," however that term may be defined, is constitutionally compelled because (1) state discrimination in education may not be based on color, (2) the state may not employ arbitrary geographical lines to establish electoral units within local governments, and (3) wealth may not be used to differentiate among criminal defendants if such discrimination is adverse to the indigent.[27]

But the plaintiffs' conclusion does not follow so readily from the preceding building blocks. The decided cases establish significant, but limited principles. To illustrate, *Brown* v. *Board* was primarily a desegregation case. Although placed in the context of public schools, it does not undermine the validity of Illinois' public financing. Similarly, *Hobsen* v. *Hansen*, 269 F.Supp. 401 (D.D.C. 1967), struck down variations in expenditures because the classifying factor was race.[28] The holding in *Douglas* v.

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[25] See, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Avery* v. *Midland County*, 36 L.W. 4257 (1968).

[26] See, *e.g.*, *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Douglas* v. *California*, 372 U.S. 353 (1963); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

[27] See generally Kurland, *"Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined,"* 35 U.Chi.L.Rev. 583, 586 (1968).

[28] Of course, if plaintiffs alleged that Illinois' legislation was designed to avoid the Supreme Court's racial desegregation decisions, they would state a cause of action. See *Griffin* v. *School Board*, 377 U.S. 218 (1964).

California, 372 U.S. 353 (1963), derived primarily from its criminal justice setting, rather than the poverty of the defendant. Moreover, *Reynolds* v. *Sims*, 377 U.S. 533 (1964), strengthened citizens' voting rights because the Constitution specifically enfranchises all citizens equally, not as a result of general antipathy to historical geographical divisions.

Actually, there is little direct precedent because the contentions now presented are novel. But, the few relevant cases indicate that plaintiffs must resort to the legislature rather than the courts. The students are not deprived of their civil rights under 28 U.S.C. § 1343 because the asserted guarantee does not exist under the Constitution. *LeBeauf* v. *State Board of Education*, 244 F.Supp. 256, 260 (E.D.La. 1965), held:

> "'There simply is no right, privilege, or immunity secured to these plaintiffs by the Constitution and laws of the United States being in any way denied by these respondents when they allocate and disburse funds . . .'"[20]

Similarly, in *Hess* v. *Mullaney*, 213 F.2d 635 (9th Cir. 1954), the Ninth Circuit upheld a property tax which returned a disproportionately small amount of funds to the

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[20] Although the primary thrust of the complaint was directed against local segregation, the court squarely confronted the question now before this court, sustaining state legislation which provided that:

> "[A] large portion of the funds so allocated must be apportioned on a per educable basis, and the remaining distribution is made on a basis of equalization so as to provide and insure a minimum educational program in all public schools." 244 F.Supp. 258.

taxpayers' locality.[30] Since this tax also supported the public schools, the plaintiffs' instant claim is analogous. See also *General American Tank Car Corp.* v. *Day*, 270 U.S. 367 (1926).[31] *Compare Dean* v. *Coddlington*, 81 S.D. 140 (1964); *Sawyer* v. *Gilmore*, 109 Me. 169, 83 A. 673 (1912); *Orleans Parish* v. *State Board*, 215 La. 703, 41 So. 2d 509 (1949).[32]

IV. Lack of Judicially Manageable Standards.

Even if the Fourteenth Amendment required that expenditures be made only on the basis of pupils' educational needs, this controversy would be nonjusticiable. While the complaint does not present a "political question" in the traditional sense of the term, there are no "discoverable

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[30] "It is argued that . . . in effect it [the taxation formula] amounts to an exemption from the tax of all this property within cities and districts . . .

. . .

" . . . No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds." 213 F.2d 639-40.

[31] "We are not concerned with the particular method adopted by Louisiana of allocating the tax between the State and its political subdivisions. That is a matter within the competency of the state legislature." 270 U.S. 372.

See *Columbus Southern Railway* v. *Wright*, 151 U.S. 470, 476-7 (1894).

[32] Moreover, the students are arguably complaining only about a property interest, rather than their personal liberty, so that the grievance does not fall within section 1343. With more money, plaintiffs could either attend private schools or move to a wealthy school district. See generally *Gray* v. *Morgan*, 371 F.2d 172, 174 (7th Cir. 1966). See also *Abernathy* v. *Carpenter*, 208 F.Supp. 793 (W.D.Mo. 1962), *affirmed* 373 U.S. 241 (1963).

and manageable standards'"[33] by which a court can determine when the Constitution is satisfied and when it is violated.[34]

The only possible standard is the rigid assumption that each pupil must receive the same dollar expenditures. Expenses are not, however, the exclusive yardstick of a child's educational needs. Deprived pupils need more aid than fortunate ones.[35] Moreover, a dollar spent in a small district may provide less education than one used in a large district. As stated above, costs vary substantially throughout the state. The desirability of a certain degree of local experimentation and local autonomy in education also indicates the impracticability of a single, simple formula. Effective, efficient administration necessitates decentralization so that local personnel, familiar with the immediate needs, can administer the school system. As new teaching methods are devised and as urban growth demands changed patterns of instruction, the only realistic way the state can adjust is through legislative study, discussion and continuing revision of the controlling statutes.

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[33] *Reynolds* v. *Sims*, 377 U.S. 533, 557 (1964).

[34] Illustrating the lack of standards, plaintiffs' original complaint sought to have this court "order defendants to submit . . . a plan to raise and apportion all monies . . . in such a manner that such funds available to the school districts wherein the class of plaintiffs attend school will . . . assure that plaintiff children receive the same educational opportunity as the children in any other district . . . . "

[35] Ideally, disadvantaged youth should receive more than average funds, rather than equal expenditures, so their potential can be fully developed. A rule coercing equal expenditures for all, especially if raised to a constitutional plane, would completely frustrate this ideal. See generally Kurland, *"Equal Educational Opportunity: The Limits of Constitutional Jurisprudence. Undefined,"* 35 U.Chi.L.Rev. 583, 591 (1968).

Even if there were some guidelines available to the judiciary, the courts simply cannot provide the empirical research and consultation necessary for intelligent educational planning.[36] As early as 1919 Mr. Justice Holmes explained that "the Fourteenth Amendment is not a pedagogical requirement of the impracticable." *Dominion Hotel* v. *Arizona*, 249 U.S. 265, 268 (1919).

Plaintiffs have assumed that requiring expenditures to be related to the needs of the students will result in better education for deprived students without a corresponding decrease in the quality of education now offered by the affluent districts. The more money the latter districts must supply to the former, however, the less incentive the well-to-do will have to raise their tax rates. If the quality of good public schools declines, affluent children have the option to attend private schools,[37] thus completely eliminating the need for the wealthy to raise taxes.[38]

V. Conclusion

The present Illinois scheme for financing public education reflects a rational policy consistent with the mandate of the Illinois Constitution. Unequal educational expendi-

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[36] *Compare Baker* v. *Carr*, 369 U.S. 186, 282 & 323 (1962); *Colegrove* v. *Green*, 328 U.S. 549, 556 (1946); *Coleman* v. *Miller*, 307 U.S. 433, 454-5 (1939).

[37] See *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).

[38] Furthermore, the public schools' most acute financial crisis is in the large cities. But their struggles are only symptomatic of the overall decay of many urban centers. Despite the attempts of Congress and the state legislatures, the nation still does not have the solution to this degeneration, principally because there are not enough tax dollars to meet all needs. If the legislatures cannot solve these problems surely the deep cutting edge of constitutional precepts is not the answer. *Compare Avery* v. *Midland County*, 36 L.W. 4257, 4264 (1968) (Mr. Justice Fortas' dissent).

tures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination. Moreover, the statutes which permit these unequal expenditures on a district to district basis are neither arbitrary nor unreasonable.

There is no Constitutional requirement that public school expenditures be made only on the basis of pupils' educational needs without regard to the financial strength of local school districts. Nor does the Constitution establish the rigid guideline of equal dollar expenditures for each student.

Illinois' General Assembly has already recognized the need for additional educational funds to provide all students a good education. Furthermore, the legislative School Problems Commission assures a continuing and comprehensive study of the public schools' financial problems. If other changes are needed in the present system, they should be sought in the legislature and not in the courts. Plaintiffs have stated no grounds for judicial relief, and this cause must be dismissed.

Dated this 15th day of November, 1968.

.....

Judge of the United States Court of Appeals for the Seventh Circuit, Designated Member of the Three-Judge District Court.

.....

District Judge of the United States District Court for the Northern District of Illinois, Eastern Division, Designated Member of the Three-Judge District Court.

.....

District Judge of the United States District Court for the Northern District of Illinois, Eastern Division, Designated Member of the Three-Judge District Court.

APPENDIX B

Article IX §12 — Illinois Constitution:

> No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, * * *

Chapter 85, Ill. Rev. Stats. (1967):

> 851. *Limitation on indebtedness of counties under 500,000 and townships, school districts or other municipal corporations under 300,000.*] § 1. Except as hereinafter provided in this Act, no county having a population of less than 500,000 and no township, school district or other municipal corporation having a population of less than 300,000 shall become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding two and one-half per centum (2½%) on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness.
>
> Any county, township, school district and municipal corporation may provide by resolution for the taking of a census of the population thereof in order to determine the number of such population for any and purposes of this Act. The courts in this State shall take judicial notice of the population of any county or township or school district or municipal corporation as the same may appear from the latest county or township or school district or municipal corporation census so taken. However, no county or township or school district or municipal corporation census shall be taken by the authority of this section, oftener than once in three years. As amended by act approved July 17, 1945. L. 1945, p. 1203.

851.2 *Indebtedness of school districts for building and working cash fund.*] § 1.2. The limitation prescribed in Section 1 of this Act shall not apply to any indebtedness of any school district for acquiring or improving a site or sites, constructing, extending, improving and equipping school buildings or establishing a working cash fund. As amended by act approved May 24, 1957. L. 1957, p. 285.

851.3 *Indebtedness of school districts for funding bonds.*] § 1.3. The limitation prescribed in section 1 of this act shall not apply to any indebtedness of any school district incurred in connection with the issuance of funding bonds. As amended by act approved Aug. 15, 1941. L. 1941, vol. 2, p. 472.

Chapter 122, Ill. Rev. Stats. (1967) (continued in a separate volume).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 1033

LINDA McINNIS et al., *Appellant*,

v.

SAMUEL H. SHAPIRO et al., GOVERNOR OF THE STATE OF ILLINOIS, *Respondent*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE RE JURISDICTIONAL STATEMENT OF APPELLANTS

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Amici Curiae

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MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE RE JURISDICTIONAL STATEMENT OF APPELLANTS



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SAMUEL H. SHAPIRO et al., GOVERNOR OF THE STATE OF ILLINOIS, *Respondent*.

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MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE RE JURISDICTIONAL STATEMENT OF APPELLANTS

The undersigned hereby move for leave to file the attached brief relating to the jurisdictional statement of appellants.

INTEREST OF AMICI CURIAE

Our interest in this case relates to law reform. We represent no clients. For three years we have engaged collectively in research and analysis of the issue represented by this case. The synthesis of this research will be available this year in a co-

authored work to be published by the Harvard University Press entitled PRIVATE WEALTH AND PUBLIC EDUCATION. A part of this work — including much of the constitutional analysis — will appear in the April, 1969, issue of the CALIFORNIA LAW REVIEW under the title *Educational Opportunity: A Workable Constitutional Test for State Financial Structures.*

Our knowledge of this case convinces us that certain aspects have not been and may not be adequately presented by the parties. Our particular concern is that the one standard for measuring the State's obligation which we consider workable was not illuminated in the hearing below. Unconsciousness of that standard left the judges effectively disabled by the false assumption that no workable standard exists. Left unchallenged, that assumption could cripple subsequent judicial consideration. We believe it important that, in determining whether to give the appeal plenary consideration, the Supreme Court have the opportunity to appraise the potential relevance of the alternative standard we will suggest.

Consent to the filing of an amicus brief was given by appellants' counsel. A request for consent from the respondent was made in a telephone conference with an assistant attorney general of Illinois on February 4, 1969; to date no response has been received.

Accordingly, we request leave to file the attached brief.

Date: February 14, 1969

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BRIEF OF AMICI CURIAE RE JURISDICTIONAL STATEMENT OF APPELLANTS

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BRIEF OF AMICI CURIAE RE JURISDICTIONAL STATEMENT OF APPELLANTS

The nature of the interest of amici curiae is stated in the attached motion (see p. 3 above) and is incorporated herein.

SUMMARY OF ARGUMENT

I.

The decision below was based largely upon a supposed absence of standards. However, the court below rendered its judgment in apparent ignorance of the standard to be proposed herein for evaluating the validity of state systems of public school finance. Summary disposition of the appeal by the Supreme Court would tend to stifle consideration of that standard and of the entire public school financing issue which is now the subject of important litigation in six lower courts. Therefore, the most feasible dispositions of the appeal are either (1) to hold the appeal to await the resolution of and consolidation with similar cases, or (2) to note probable jurisdiction but postpone plenary consideration to await resolution of and consolidation with other pending cases, or (3) to remand to the district court for consideration of the constitutional standard herein proposed.

II.

The following constitutional standard is clear and moderate and is effective to terminate the principal inequity characteristic of public education financial structures:

> The quality of public education may not be a function of wealth other than the wealth of the state as a whole.

III.

There is a multitude of state financing systems — centralized and decentralized—which would satisfy the proposed standard.

ARGUMENT

I. Circumstances suggest that the Court either hold the appeal, note probable jurisdiction and postpone plenary consideration, or remand for further consideration by the Court below.

This appeal is one of rare significance. Potentially it involves the validity of the structure of public educational finance in nearly every state. Whatever its resolution the consequences

for future generations of Americans are immeasurably great. It is the first of at least seven cases raising the fundamental question whether the historic state statutory systems for distribution of educational resources satisfy the Equal Protection clause of the 14th Amendment. The other six cases are in varying stages of trial or appeal. It is most probable that, whatever the outcome in lower courts, the litgants in those cases will seek final adjudication in the Supreme Court of the United States. These cases are the following:

1. *Serrano v. Priest*, No. 938254, Superior Court of California, Los Angeles County (decided January 8, 1969), the appeal in which is now in course of preparation.
2. *Silva v. Atascadero Unified School District No. 595954*, Superior Court of California, San Francisco County.
3. *Board of Eduction v. Michigan*, Civil No. 103342, Circuit Court of Michigan, Wayne County.
4. *Burrus v. Wilkerson*, United States District Court for the Western District of Virginia (docket number unknown).
5. *Rodriguez v. San Antonio Independent School District*, Civil No. 68-175-5A, United States District Court for the Western District of Texas.
6. *Guerra v. Smith*, Civil No. A-69-CA-9, United States District Court for the Western District of Texas, Austin Division.

Deliberation by this Court could be materially assisted by prior consideration of this issue by those courts, state and federal, having jurisdiction of these six suits. Furthermore, the issue could be more sharply defined and alternative resolutions evaluated, if there were an opportunity for scholarly comment, of which there has been far too little. Only since the decision below was rendered have two serious works appeared, each of which might have caused the court to modify its position. One

is a book by Dr. Arthur Wise entitled RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY (University of Chicago, 1969); the other is an article by David Kirp, *The Constitutional Dimensions of Equal Educational Opportunity,* 38 HARV. EDUC. REV. 635 (1968). The only published legal analysis of which the court showed awareness is that of Professor Phillip Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined,* 35 U. CHI. L. REV. 583 (1968). The Kurland article was incapable of assisting the court below in its search for standards, since Kurland assumed that no usable standard could be found, and, on that basis, proposed the result reached by the lower court. Kurland was unaware of the standard to be suggested in this brief.

If this were a certiorari case, such unavoidable gaps in the information available to the district court might argue for denial of the petition. Since this case is on appeal, however, there are two offsetting and decisive considerations.

First, summary disposition will constitute a decision on the merits; however intended by the Supreme Court, such a resolution could be accorded excessive deference by the very courts in whose hands this issue now should be taking shape. Even a dismissal for want of a properly presented federal question would risk this result.* Ironically, by forsaking plenary consideration, the Court could be chilling the judicial debate which, in this intensely complex matter, could play a crucial role in illuminating the ultimate choices.

Secondly, any implication, however indirect, that the opinion below has been approved by the Supreme Court would be extremely unfortunate. The court below did not exhibit even a rudimentary understanding of the options open to the judiciary in the handling of this problem. It supposed that, in order to support the plaintiffs, it must impose upon the state either of two centralized alternatives to the existing finance systems — that it must prescribe judicially a 14th Amendment standard either of "educational needs" on the one hand or equal spending

*Should the Court adopt such a course, however, amici urge that the Court specifically limit the application of its decision to this record only.

per child on the other. Unchallenged, this error could be taken seriously by other courts to the permanent misshaping of the ensuing debate. Already this effect has been manifested in a similar case in a California trial court. In *Serrano v. Priest*, No. 938254, Superior Court of California, Los Angeles County, decided January 8, 1969, the trial judge dismissed without opinion, citing as authority the case below.

Given these considerations, we believe that a primary objective to be served is the avoidance of precipitous decision. To that end we respectfully urge that the Court consider three alternative dispositions. Although the courses suggested are somewhat unusual, we are confident that all three procedures accord with prudent administration of the appeals docket. *First*, we suggest most strongly that this Court simply hold the appeal, at least until other courts have had some opportunity to consider this issue. However, *second*, if in this term the Court should note probable jurisdiction, we urge that the appeal be set back on the calendar and full consideration postponed. If either course is adopted, the resulting delay should permit eventual consolidation with one or more of the other six cases now on the trial or appellate level. There would be no disadvantage to the state in such a postponement, as the Illinois system can function in the meantime without interference. Further, it is possible that the delay involved will exceed only slightly the delay normally attendant upon plenary consideration.

As a *third* alternative, the Court could remand the case to the district court specifically for an evaluation of the constitutional standard to be suggested in this brief and/or other standards. The court below felt that it had not been presented a tenable principle by which to test the constitutionality of the state system. If the standard herein proposed appears promising, prudent judicial administration well may suggest that the district court be given the initial opportunity to consider its feasibility and implications. Such a procedure is unusual but scarcely radical. It permits the trial court to reconsider a difficult problem from a perspective which was unavailable to it at the time of its first decision. The court can correct for itself what

may have been an unavoidable error. This procedure is especially appropriate where the other cases raising the same issue are in the earlier stages of litigation and where only the accidents of federal jurisdiction have propelled this case to the Supreme Court level at so early a date.

The rest of this brief will be given over to an examination of the standard here proposed and to a description of a few of the multitude of fair state systems for financing public education which this standard would permit.

II. The principle that wealth should not determine quality is a clear, moderate, and effective standard which would leave broad discretion to the State and would not require equality of spending.

Given its perception of the judicial standards available to test the validity of the state system, the court below had little choice but to act as it did. On the one hand, it was offered a standard of individual students' "needs" which it found unintelligible; on the other loomed the alternative principle of uniformity in spending – one child, one dollar – a standard which was utterly rigid and totally preemptive of state discretion. The court's exit from this seeming dilemma was perfectly understandable. It was also quite wrong. There does exist a clear, moderate, and effective standard for judging the manner in which public education is financed.

That standard is the following:

> *The quality of public education may not be a function of wealth other than the wealth of the state as a whole.*

This principle is effective. The primary fiscal inequity in the Illinois system is the distribution of the educational resources of society according to the wealth (assessed valuation per pupil) of artificial, state-chosen entities, in this case school districts. *

---

*Indeed, as is made plain by footnote 8 and the text accompanying footnote 9 of the opinion below, in the case of flat grants to the districts from the State, the state revenue expended goes *only* to the *wealthiest* dis-

Such statutory preference for state-created enclaves of relative wealth is a gross discrimination with awesome implications for the victims residing in poorer districts. It would be prohibited by the proposed standard.

That standard is clear. No inquiry is necessary beyond those facts revealed by the public records of Illinois reporting tax rates, assessed valuations, and pupil populations of the districts, for these clearly demonstrate the powerful and direct correlation between wealth and quality. The court's own figures show it. Actually, even such facts are superfluous, for the invalidity of the system would follow simply from an examination of the statutes attacked. The preference for wealth in the Illinois system is structural, as the court below concedes.

The standard is moderate. Cast in negative terms it would prohibit only the essence of fiscal inequity and require nothing affirmative. The state would not be required to spend for public education in any particular manner; no objection would be made to variations in expenditure; no barriers would be raised to decentralization, preference for gifted students, compensatory aids for the disadvantaged, or any other rational legislative choice. The only limitation upon the distribution of educational resources would be the elimination of wealth criteria.

The district court should be given the opportunity to evaluate this standard and to reconsider its own judgment in the light of it.

III. There exists a multitude of alternative basic systems for financing public education which would satisfy the principle that wealth may not determine quality.

To illuminate further the proposed standard we will suggest a few of the immensely varied systems from which a state

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tricts. Only elementary districts rich enough to raise $353 at a 1% local tax receive *any* benefit from the flat grant (the comparable figure for high school districts is $345.95). To receive *full* benefit from the flat grant the district wealth must be great enough to produce $400 at a 1% tax. What a grotesque and stunning perversion of educational policy — a bonus from the state for being rich!

could choose, if it were denied the power to make educational quality a function of wealth.

De-centralized Systems Satisfying the Principle

At least two general styles of de-centralized systems are imaginable, either of which, alone or in combination with the other, would eliminate the effects of variations in wealth while retaining – indeed increasing – local fiscal control.

District Power Equalizing. A state which wished to emphasize local government could easily equalize the revenue-raising power of school districts by eliminating wealth from the formula now determining a school district's per pupil expenditure. Instead of the educational offering of a district being a function of both district wealth and district tax effort, as now is the case, it would become a function of *effort alone.* The easiest way to perceive this is to suppose that the legislature has adopted a table which specifies how much on the average per pupil each district will be permitted to spend for each level of tax effort it makes against local wealth (preferably income, but, more realistically—considering existing patterns—real property). Such a table might look like this:

Local Tax Rate	*Permissible Average Per Pupil Expenditure*
10 mills (minimum rate permitted)	$ 500
11	550
12	600
13	650
14	700
. . . . .	. . . . .
. . . . .	. . . . .
29	1450
30 mills (maximum rate permitted)	1500

Irrespective of the amount of the local collections, the district would be permitted to spend on the average per pupil that amount – and only that amount – fixed by statute for

the tax rate *locally chosen*. Rich districts and poor districts taxing at 12 mills would provide a $600 education. Poor districts and rich districts taxing at 30 mills would provide a $1500 education. The sole factor determining what a district could spend would be the sacrifice in property tax it was willing to make.

Such a system might, of course, require the redistribution of excess local collections in rich districts and the State's subvention of insufficient collections in poor districts. The magnitude of such adjustments would depend largely on the extent to which the state wishes to pay for the total statewide cost of education out of statewide sources; this in turn would be affected by the extent to which the state wishes to stimulate district effort, using state money as an incentive. A state which was willing to permit the richest district to retain all that it collected locally would be required to assume centrally a substantial portion of the total education budget in order to render the poorest district equal to the richest in its ability to meet the costs of education. The formulas for controlling total cost and the respective state and local shares are infinitely variable, but the effect in any case is to make all districts equal in their *power* to raise dollars for education. The variations from district to district in dollars per pupil spent upon education would thus be a function of local interest in public education. Power equalizing would not guarantee equal dollars per pupil – a goal the court below properly considered fatuous and counter productive. It would merely deny the "right" to have a better school for *less* effort and, thereby, would maximize the incentive for political effort at the local level.

Family Power Equalizing. A state which wishes to emphasize individual choice could apply the power equalizing principle to a different unit. The family instead of the school district could be given the power to decide its own desired level of sacrifice or effort for education. The wealth against which the tax effort would be made would be the family income per child. For each level of self-chosen tax effort permitted by the system, a specific level of spending would be allowed the family for all its children. Each child would be given scrip in the amount

fixed by the statutory formula with which to purchase education. Given appropriate adjustment for marginal utility, cost of living, etc., equal tax efforts would give families of varying wealth access to schools of equal offering.

The state would decide how the necessary range of schools would be provided. If it wished, it could permit both public and private schools to respond to the variety of choices made by families; the resulting system would resemble a market in which public and private educators could meet a variety of demands for quality by spending varying average amounts per pupil. All participating schools (including private schools, if included in the system) would have to accept the scrip as the sole measure of tuition. Otherwise wealth determinants of quality would be reintroduced by the option for parents of varying wealth to supplement the state stipend. On the other hand, private schools not accepting the scrip could charge what they pleased, as they do today. Obviously, many refinements, complexities, and objections are neglected here, but at the least it can be seen that even radical experiments in school finance can satisfy the constitutional standard proposed.

Centralized Financing Systems Satisfying the Principle.

It is difficult to imagine the adoption of any system of public education financed entirely by a statewide system of taxation and distribution which would offend the principle that quality may not be a function of wealth. No state is likely to adopt a *specific* preference for either rich districts or rich families, and any device to achieve that end by indirection would be easily unmasked. All other distributions of public educational resources would be inoffensive to the proffered standard (though some other principle of law could be violated). Of course, centralized financing would not necessarily imply centralized decision making concerning spending. To whatever degree it wished, the state could emphasize local choice in spending the dollars provided by the State.

CONCLUSION

The Court may best effect a prudent resolution of this crucial issue (1) by holding the appeal to await the resolution and consolidation of one or more of the similar cases now in course of litigation, (2) by noting probable jurisdiction and postponing plenary consideration for the same purposes, or (3) by remanding the case to the district court for consideration of the constitutional standard herein proposed or other standards in the context of the Illinois litigation.

Dated February 14, 1969.

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No. 1033

In the SUPREME COURT OF THE UNITED STATES

October Term, 1968

LINDA MCINNIS, ET AL., APPELLANTS,

v.

RICHARD B. OGILVIE, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MOTION TO FILE BRIEF SUPPORTING JURISDICTIONAL STATEMENT AND BRIEF FOR

American Federation of Labor–Congress of Industrial Organisations

American Federation of Teachers

International Union, UAW

Western Center on Law and Poverty

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MOTION TO FILE BRIEF SUPPORTING JURISDICTIONAL STATEMENT FOR

American Federation of Labor–Congress of Industrial Organizations
American Federation of Teachers
International Union, UAW
Western Center on Law and Poverty

AS AMICI CURIAE

The undersigned hereby move for leave to file the attached brief supporting the Jurisdictional Statement in the above-entitled case. Appellees' counsel have refused consent to the filing of an amicus brief.

The interests of the amici are set forth on pages 2-3 of the attached brief.

Respectfully submitted,

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 1033

LINDA MCINNIS, ET AL., APPELLANTS,

v.

RICHARD B. OGILVIE, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR

American Federation of Labor–Congress of Industrial Organizations
American Federation of Teachers
International Union, UAW
Western Center on Law and Poverty

AS AMICI CURIAE

INTERESTS OF AMICI

1. The American Federation of Labor-Congress of Industrial Organizations is a federation of 122 national and international labor organizations having a total membership of approximately 12,500,000. The American labor movement has throughout its history sought maximum educational opportunity for all children. Unions played a

major role in the establishment of public schools early in the 19th century and have continuously worked for the extension and improvement of public education. This case directly involves the quality of schooling and the integrity of the public education concept in theory and in practice throughout the United States.

2. The American Federation of Teachers is a union with a membership of about 175,000 public school teachers. Its locals are found throughout the country, with the greatest concentration of locals and members in many of the states where the issues raised in this case are most acutely presented. The financial problems of public education are of direct concern to every one of its members and vitally affect the realization of the educational goals for which the AFT has striven throughout its existence.

3. The United Automobile Workers and its nearly one and a half million industrial-worker members are vitally interested in quality public education for all our children. Having long supported the interests of the disadvantaged and the poor, UAW believes strongly in equality of educational opportunity and believes that a public education system built on inequality plainly violates fundamental constitutional guarantees.

4. The Western Center on Law and Poverty, funded primarily by the Office of Economic Opportunity, is a consortium of OEO-supported legal services programs and law schools in Southern California. It serves as a central research and technical assistance agency for these legal services programs, and has been active in efforts to achieve equality of educational opportunity for the poor. Lawyers affiliated with the Center are counsel for plaintiffs in *Serrano* v. *Priest*, No. 938254, Superior Court, County of Los Angeles, similar to the case now before this Court.

STATEMENT: WEIGHTY CONSTITUTIONAL ISSUES ARISE FROM PUBLIC EDUCATION INEQUALITIES IN ILLINOIS AND NUMEROUS OTHER STATES OF THE UNION.

This case raises novel and important constitutional questions concerning the financing of public school education in Illinois. Plaintiffs challenge a system whereby the accident of a child's place of residence determines whether he receives a superior, an average, or a greatly inferior public education. Notwithstanding the gravity of the constitutional issues evoked, the Court below dismissed plaintiffs' claim on the bare pleadings, without the benefit of a trial of the material facts necessary to informed adjudication of the complex issues at bar. Amici in this brief urge that the District Court erred in resolving these questions in the present posture of the case. We suggest that this Court remand to the District Court for a trial of the material facts because ". . . it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion, if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer" (*Borden's Co.* v. *Baldwin*, 293 U.S. 194, 213 (concurring opinion of Justices Stone and Cardozo)).

In the pending case this Court's attention is directed for the first time to tragic inequalities in the public education systems of many of our states. See generally F. Keppel, The Necessary Revolution in American Education 80 (1966); J. Conant, Slums and Suburbs 145 (1961). In its early years the public education movement in the United States gave promise of a great egalitarian reform: the children of poor families unable to afford private education would receive their preparation for life and livelihood through public support. J. Quincy, Municipal History of

the Town and City of Boston 21-22 (1852). See *Brown* v. *Board of Education*, 347 U.S. 483, 493. But it was soon discovered that some localities were too impoverished to bear so significant a fiscal burden from local tax revenues; accordingly, early in the development of our public education systems most states adopted equalizing "flat grant" and "foundation plan" payments of direct state money supplements to local school districts.

Today it is clear that these state aid measures have failed in their egalitarian intent. For in numerous states (including the largest and most populous) there exists a first rate public education for some children, only passable schooling for others, and a vastly inferior public education for children in poorer areas—chiefly our central cities and small rural localities. Public education in many of our states presents a picture of four-fold inequality: i. gross malapportionment of school districts with respect to their resources for school finance; ii. great disparities (as much as 7 to 1) between school districts in per-pupil expenditures; iii. vast inequalities in the public education thus provided for children within the same state; and iv. inferior public schooling and preparation for life and livelihood for the poorest and most needy children. These multiple inequalities underly this case and similar suits pending in state and federal courts in California,[1] Michigan,[2] and Texas,[3] which invoke substantial equal protection issues under this Court's previous decisions. See generally Horowitz, *Unseparate but Unequal—the Emerging Fourteenth Amendment Issue in Public School Education*, 13 U.C.L.A. L. Rev. 1147 (1966).

i. *Malapportionment of School Districts.* The ultimate

[1] *Serrano* v. *Priest*, No. 938254, Superior Court, County of Los Angeles, Cal., dismissed January 8, 1969 on authority of present case.

[2] *Detroit Board of Education* v. *Michigan*, No. 103342, Circuit Court, Wayne County, Mich.

[3] *Rodriguez* v. *San Antonio Independent School District*, No. 68-175 S.A., U.S.D.C., W.D. Tex.

cause of the constitutional infringements presently in issue is the malapportionment (or non-apportionment) of school districts with respect to their ability to finance public education. Under state laws and constitutions throughout the nation public education is a state responsibility,[4] and the establishment of school districts[5] and operation of public schools is regulated by state law. Typically, the legislature provides that, except as supplemented by state payments to local districts, the principal fiscal burden for the operation of public schools is borne by local levy of taxes upon property within the school district A. Wise, *supra* note 5 at 127. Due to historic fortuity aggravated by the force of political inertia, today's school districts are grossly malapportioned with respect to their ability to finance from local revenues the education which it is their function to provide. Measured by per-pupil assessed property value in the district, the magnitude of the malapportionment in ability to finance education at comparable property tax rates is typically on the order of 50 to 1, 100 to 1, and even greater disparities between the state's wealthiest and poorest districts. In Illinois the Monticello District has a per-pupil valuation of property available for school taxation of $114,000, while Brookport District has $3,000; in Michigan the River Rouge District's property valuation per pupil is $53,156, while Forsyth is $1,319; in California the Big Creek District has $306,077 per aver-

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[4] State constitutions commonly provide that public education is a state function entrusted to the preservation and control of the legislature. Mich. Const., art. VIII; Ill. Const., art. VIII; Cal. Const., art. IX. See *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 657 (E.D. La. 1961) *aff'd*, 368 U.S. 515.

[5] N.Y. Consol. Laws §§ 310, 1505 (McKinney 1953); Mich. Stat. Ann. 15.3402 (1968); *Kinney* v. *County Bd. of School Trustees*, 7 Ill. App. 2d 286, 289, 129 N.E. 2d 292 (1955); *County School Trustees* v. *Common School District No. 6*, 284 S.W. 306, 307 (Tex. Civ. App. 1926); A. Wise, Rich Schools, Poor Schools, 93-112 (1968).

age daily pupil attendance, while Olinda District has $3,698; the range in New York is from over $200,000 to under $5,000.[6]

The gross malapportionment of public school districts with respect to their ability to provide comparable education surely gives rise to profound constitutional questions under this Court's rulings. In striking down malapportionment of state legislatures, this Court has emphasized that legislators "represent people, not trees or acres" (*Reynolds* v. *Sims*, 377 U.S. 533, 562), and that a system which gives one citizen substantially more voting strength than another in the selection of the legislature is antithetical to the very function of representing these citizens. In like measure, gross malapportionment of school districts with respect to their taxable wealth—and thus their ability to finance public schooling—disserves the very function of providing public education for which school districts exist. As much as there is no credible basis for favoring one voter over another in the voting booth, education is a process of instructing individual human beings in which no rationality underlies the preferment of a child in one school district over the child residing in another. Yet exactly that preferment arises from the existing malapportionment of school district wealth, which results in major and arbitrary inequalities in the actual funding of public schools within different districts of the state.

ii. *Disparities in School Funding.* The malapportionment of school districts with respect to their taxable wealth results in great disparities in school funding, notwithstand-

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[6] See Appendix, *infra*, p. 25; J. A. Thomas, School Finance and Educational Opportunity in Michigan 20 (1968); California State Department of Education, Average Daily Attendance and Selected Financial Statistics of California School Districts 1965-66, pp. 134, 115 (1967); Allen, *The State, Educational Priorities, and Local Financing,* Integrated Education 55, 58-59 (Sept.-Oct. 1968).

ing state "equalizing" supplements and the heavier tax rates which poorer districts typically impose to meet minimum education requirements. Thus, most states provide per-pupil "flat grants", and "foundation plan" supplements to school districts in amounts as high as $300 or $400 per child—supplements usually somewhat weighted to favor the poorer school districts. However, the state aid amounts are usually at or near the lowest per-child expenditure levels in the state so that their equalizing impact is very limited. Then too, poorer districts tend to impose on themselves substantially higher school tax rates to produce school revenues: in the present case the record shows poorer Illinois districts imposing as much as *two and three times* the tax rate of the wealthy districts and as much as the statute allows. See Appendix, *infra,* p. 25. Yet these efforts to reduce the impact of school district malapportionment leave gross inequalities, as high as 7 to 1, between the per-child expenditure in the state's wealthiest and poorest districts. Thus, in Virginia the annual per-child expenditure ranges from $541 in Arlington County to $72 in Buchanan County; in Illinois from $1,084 in Flannigan District to $350 in Albers; in California from $1,353 in one elementary school district to $265 in another; in New York from $1,600 to $470.[7] See also Office of Education, HEW, Profiles in School Support 70-74 (1965).

No discernible pattern underlies the differing levels of per-child public school expenditure within different districts of the state. A map of school district expenditure levels is a crazy quilt of fortuitous differentiation, be-

[7] Study Committee, Raising the Level of Public Education in Virginia 98-103 (1967); Appendix, *infra,* p. 23; Horowitz and Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place within a State,* 15 U.C.L.A. L. Rev. 787, 806; Allen, *supra* n. 6 at 58.

cause the state's investment in the public education of its children simply reflects haphazard variables of disparate local wealth and effort. Once again this Court's rulings become pertinent. Where the state legislature has made material distinctions favoring some classes and groups against others, this Court has gone far to uphold them in deference to state judgments of public policy; but where state law vests wholly haphazard and arbitrary disadvantages on persons not differently situated there is no occasion for judicial deference to any state policy judgments. See, e.g., *Morey* v. *Doud,* 354 U.S. 457, 465-66; *McLaughlin* v. *Florida,* 379 U.S. 184, 190; *Baker* v. *Carr,* 369 U.S. 186, 226; *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527-28; *Rinaldi* v. *Yeager,* 384 U.S. 305, 308-09. Just such haphazard disadvantage is the result of existing public school funding differentials, for a district with a half or third as much as another to spend for educating the school child necessarily offers a vastly inferior public education.

iii. *Inequality in Educational Offering.* What children receive in public schools is not money but education. Thus, the ultimate test of equal protection in public education looks beyond school district wealth and expenditures to the actual education offered to school children. Such scrutiny confirms the obvious: a child receiving a public school education at an annual expenditure level of $400-$500 is afforded schooling far inferior to the child for whom $1,000 is expended in a wealthier district. To some extent a poor district can compensate (at the price of inferior teaching capability) by paying lower salaries. Cost reduction is also achieved by having fewer teachers, thus suffering large and overcrowded classes with a reduced teaching and learning capability. Poorer districts also must forego facilities expensive to procure and maintain—libraries, laboratories, gymnasiums, special courses, remedial in-

struction, counseling, and the like. These disadvantages have been highlighted in a recent study by the Michigan Department of Education—"School Finance and Educational Opportunity in Michigan" (1968). Data there set forth (pp. 22-57) show the closest correlation between annual per-child expenditure levels and such education elements as class size, special classes and programs, teacher preparation, full-time principals, counseling services, research and testing, science laboratories, and library facilities. Similarly a recent Virginia report revealing school district disparities of per-pupil expenditures as great as 7 to 1 demonstrates parallel disparities in the districts' number of classrooms with more than 30 students, and in the percentage of teachers with degrees and some form of certificates.[8] These correlations demonstrate the obvious truth that more money buys a better education.

In sum, the available evidence shows that, as a consequence of existing school district malapportionment, children in wealthier school districts receive a quality public education while those in poorer districts are offered cheap and inferior schooling. Such public school inequality thrust upon children merely because of the poverty of their school district invokes a serious issue of equal protection. While arising in a racial setting, in cases under the *Plessy* doctrine (e.g., *Sweatt* v. *Painter*, 339 U.S. 629; *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637) this Court found a right of public school equality to inhere in the Equal Protection Clause, which survived until *Brown* v. *Board of Education*, 347 U.S. 483. In turn, *Brown* reiterated the right to equality in public education, emphasizing that with respect to the opportunity of an education "[s]*uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms*"

[8] Study Committee, *supra*, note 7 at 35-40, 47-49, 80-82, 98-103. See also A. Wise, *supra* note 5 at 136-38.

(Id. at 493, our emphasis). That right was upheld against state infringement in *Griffin* v. *School Board*, 377 U.S. 218 and in *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 651 (E.D. La. 1961) *aff'd*, 368 U.S. 515, where the District Court found that closing public schools in a single parish of the state would "unfairly discriminate against the residents of that parish, irrespective of race."

Under this Court's previous rulings gross and arbitrary public education inequality invokes a serious constitutional question. It does so all the more in view of the fact that it is the children of the poor—those most needy of education—who are the principal victims of the present inequalities.

iv. *Inferior Public Education for the Poor.* The ultimate paradox illumined by the pending case is that while children in the state's affluent areas enjoy high quality public education, the needy children of urban slums and rural poverty are condemned to suffer cheap and inferior public schooling. While members of state legislatures may not consciously intend it, because community wealth is the key determinant of the public education offered the inevitable consequence of the present inequalities is that poor children *most* needy of a good public education [9] are those most often denied it.

The economics of home ownership have produced great

[9] "Using achievement test data for the school year 1962-63, the study found a substantial difference in the educational requirements of urban, suburban and rural school populations. Urban districts, as defined in this study, contained 25 percent of the state's public school pupils. Yet, these same districts contained 66 percent of the state's pupils in school districts or attendance areas with average achievement test scores one-half grade or more below equated norms. Pupils in suburban districts represented 49 percent of the state's pupils and only 8 percent of pupils in low achieving districts or attendance areas. Pupils in rural districts represented 26 percent of the state's pupils and a proportional 26 percent of the pupils in low achieving districts." Fels Institute of Local and State Government, Special Education and Fiscal Requirements of Urban School Districts in Pennsylvania (2-3) (1964).

areas of wealth and poverty within the state. Where the wealthy live property values are high and a large taxable base exists for financing public schools. Conversely, the poor live where property values are the lowest and where, under the present system of malapportioned school districts, the least taxable property is available for public education. The poor are thus caught in a vicious circle where the offering of unequal public education in different school districts thrusts the disadvantages of the father upon the child. From public revenue the children of wealth obtain a first rate public education enabling them to go on to college, career, and continued affluence. Meanwhile, the children of the poor are afforded inferior public schools where they are discouraged from graduating, educated too poorly to enter college, and thus prepared only for a life of continued poverty.

Without overstatement it can be said of the present situation that the state is operating a system of public education which perpetuates the prospects of a lifetime of poverty for the children of the poor. In *Griffin* v. *Illinois,* 351 U.S. 12, *Douglas* v. *California,* 372 U.S. 353, and *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663, this Court struck down laws having unequal effect upon the poor. As the Court reminded in invalidating the Virginia poll tax in *Harper* (at p. 668), "Lines drawn on the basis of wealth or property, like those of race. . . . are traditionally disfavored." To deny any children equality of public education merely because of the poverty of their school district is bad enough. Systematically to thrust inferior public education upon the children of the poor, perpetuating family poverty from generation to generation, is to exceed all defensible bounds.

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The foregoing exposition underlines the multiple inequalities existing in public education in many of our states and highlighted in the present case—malapportionment of school district wealth, disparities in public school funding, inequality of public education, and inferior public education for children of the poor. Each of these inequalities presents a tangible constitutional question, and manifestly the confluence of all four raises a substantial equal protection issue. See *Reynolds* v. *Sims, supra; Morey* v. *Doud, supra; Brown* v. *Board of Education, supra; Harper* v. *Virginia Bd. of Elections, supra.*[10] Surely the constitutional questions plaintiffs sought to plead entitled them to a trial. However, by summary dismissal of the action the Court below short-circuited the process of constitutional adjudication. We urge in the Argument that this Court return the case for a trial, where the material facts governing the grave constitutional issues presented can be adjudicated through orderly process.

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[10] In urging that grave constitutional questions arise from inequality of public education in different districts within the state, we do not mean to suggest that similar inequalities as between states of the union would invoke constitutional doubts. To suggest that states vis-a-vis the federal government are analogous to local school districts vis-a-vis the state would be to defy the teaching of history and the nature of the federal union. In a similar setting involving malapportionment of the legislature, this court in *Reynolds* v. *Sims*, 377 U.S. 533, 574, recently rejected such an analogy in presently applicable terms:

> "The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our federal public. Arising from unique historical circumstances, it is based on the consideration that in establishing our type of federalism a group of formerly independent States bound themselves together under one national government. Admittedly, the original 13 States surrendered some of their sovereignty in agreeing to join together 'to form a more perfect Union.' But at the heart of our constitutional system remains the concept of separate and distinct governmental entities which have delegated some, but not all, of their formerly held powers to the single national government . . ."

ARGUMENT: THE COURT BELOW ERRED IN DECIDING CONSTITUTIONAL ISSUES NOT PROPERLY RESOLVABLE BEFORE TRIAL OF THE MATERIAL CONSTITUTIONAL FACTS.

Vital constitutional questions inhere in the pending suit, but on the present record the Court below was not in a position to resolve them. This Court's general rule against premature constitutional adjudication (*Ashwander* v. *Valley Authority,* 297 U.S. 288; *Rescue Army* v. *Municipal Court,* 331 U.S. 549) has special applicability where on the bare pleadings a court does not yet have the material facts for resolution of a novel and important constitutional issue. The impropriety of constitutional decision on the pleadings is highlighted by *Borden's Co.* v. *Baldwin,* 293 U.S. 194, 209, where the Court refused to decide a constitutional issue at the pleading stage because it turned on "facts which are the proper subjects of evidence and of determinations of fact by the trial court."[11] The principle has special applicability where the relevant facts are complex or there is presented a major constitutional question of

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[11] In *Borden's* the Commissioner of Agriculture of New York was sued by a party asserting that the state's milk control law violated the Fourteenth Amendment. After presentation of opposing affidavits a three-judge District Court dismissed the complaint for failure to state a constitutional cause of action. This Court reversed for a trial of the constitutional question:

> "For the present purpose, it is sufficient to say that these arguments are addressed to particular trade conditions in the city of New York, which largely lie outside the range of judicial notice. Counsel refer to the affidavits submitted on the motion for injunction. And we are asked to extract from various tables and statements in the reports of the legislative committee, which were not addressed to the fixing of the differential here in question, sufficient data upon which to predicate a judgment. But the case is not before us upon evidence, or upon determinations of fact based on evidence, as the complaint was dismissed solely in the view that it failed to state a cause of action . . . the decision of this appeal should not turn on . . . facts which are the proper subjects of evidence and of determinations of fact by the trial court" (293 U.S. at 208-209).

first impression. As emphasized in *Borden's* (at 212), the Court's earlier ruling in *Hammond* v. *Schappi Bus Line*, 275 U.S. 164, 172, held that "before the questions of constitutional law, both novel and of far reaching importance, were passed upon by this Court, 'the facts essential to their decision should be definitely found by the lower courts upon adequate evidence.'" Accord: *Polk Co.* v. *Glover*, 305 U.S. 5, 10; *Wilshire Oil Company* v. *United States*, 295 U.S. 100, 102-103; cf. *Chicago & Grand Trunk Railway* v. *Wellman*, 143 U.S. 339, 346.[12] This important principle was recently applied in emphatic terms in *United States* v. *Auto Workers*, 352 U.S. 567. There, upon direct appeal from a district court dismissal this Court declined to resolve constitutional issues because "only an adjudication on the merits can provide the concrete factual setting that sharpens the deliberative process especially demanded for constitutional decision." Noting that "[m]atter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface," the Court emphasized that allegations "hypothetically framed to elicit a ruling from this Court or based upon misunderstanding of the facts may not survive the test of proof" (*Id.* at 591, 592). *Cf. Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 256-57.

This Court's warning against resolution of complex and novel constitutional issues upon bare pleadings has manifest applicability in the present case. Avoiding resolution of constitutional questions on the pleadings serves two salient purposes: when a novel constitutional issue arises from complex facts they should be clarified by a trial of fact, which also serves to expose the critical contentions of the opposing parties bearing on the constitutional issue for resolution. In the present case the disregard of the governing principle, over the plaintiff's objection to pre-

[12] See also Karst, *Legislative Facts in Constitutional Litigation*, Supreme Court Review 75, 95-103 (1960).

mature resolution,[13] leads the lower Court to salient errors of fact and law. It applies the wrong constitutional standard in rendering a merits ruling which confuses and obscures the central challenge at bar; it prematurely hypothesizes judicial incompetence to establish workable constitutional guidelines; and it obscures or begs relevant constitutional issues for lack of the material facts upon which they turn.

i. The Court below, while conceding that "the inequalities of the existing arrangement are readily apparent," (293 F. Supp. 327, 331) upholds the Illinois statutes on the ground that they are supported by a "rational" policy. This test is drawn from cases involving equal protection challenges to state economic regulation. However, in an individual rights setting this Court has long rejected "rational basis" as the applicable constitutional standard. It was, after all, the principal thrust of the landmark First Amendment rulings some thirty years ago that individual civil liberties take priority even over legitimate state interests, such as taxation, regulation and licensing.[14] And when "fundamental rights and liberties are asserted under the Equal Protection Clause, classification which might invade or restrain them must be closely scrutinized and carefully confined." *Harper* v. *Virginia Bd. of Elections,* 383 U.S. at 670. Accord: *Carrington* v. *Rash,* 380 U.S. 89, 96;

[13] The burden of plaintiffs' Brief in Opposition to the motion to dismiss below was that they had stated a cause of action upon which a trial was necessary. Indeed, they emphasized that this case turns upon a showing of actual inequality in education, for which a trial is required: ". . . Plaintiffs may not be able to demonstrate the factual inequality upon which their case is based. But the mere speculative difficulty of proof ought not deprive Plaintiffs of a hearing on such an important question. Once the fact of inequality is shown, judging the legality of those inequalities employs traditional standards" (Brief in Opposition, p. 81).

[14] *Schneider* v. *State,* 308 U.S. 147, 161; *Prince* v. *Massachusetts,* 321 U.S. 158, 164; *Murdock* v. *Pennsylvania,* 319 U.S. 105, 115; *Grosjean* v. *American Press,* 297 U.S. 233, 250; see *United States* v. *Carolene Products Co.,* 304 U.S. 144, 152 n. 4.

Reynolds v. *Sims*. 377 U.S. at 561-62; *Skinner* v. *Oklahoma*, 316 U.S. 535, 541; *Williams* v. *Rhodes*, 393 U.S. 23, 31.

Mistakenly employing a "rational basis" criterion, the District Court compounds the error by a merits decision which confuses and obscures the actual constitutional challenge at bar. The Court belabors the virtues of "local control" of education and public school expenditure. What plaintiffs challenge is not local control, but the right of the state in providing education for its people to escape its equal protection responsibility—by delegating tax power to subdivisions greatly unequal in taxable resources for their school populations without compensating state financial assistance to avoid gross inequalities. As the Court stated in *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 657 (E.D. La. 1961), *aff'd*, 368 U.S. 515, localism "does not excuse inequalities in a state-wide, centrally financed and administered, system of public institutions." The state cannot avoid its constitutional responsibility under the Equal Protection Clause by "carve-outs of small units" (*Id.* at 658). As this Court recently noted in an analogous context in *Reynolds* v. *Sims*, 377 U.S. 533, 575:

> "Political subdivisions of States—counties, cities or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are created 'as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature, and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.' "

The present objection is not to such public education inequalities as may result from local differences in school tax rates. Appellants' objection is that due to malapportionment they are denied equal schooling, although their school districts have taxed at the highest rates permitted by Illinois law and well above those of wealthier school districts. Under these circumstances the District Court's constitutional ruling confusing differing local effort with the critical issue of school district malapportionment was error, which underlines the wisdom of withholding constitutional decision until the adversary trial process has refined and clarified the precise contentions being urged by the opposing parties.

ii. Equally demonstrative of the dangers inhering in premature constitutional decision is the District Court's ruling that this case must be dismissed because no constitutional standard of public education equality can be judicially defined should the existing Illinois statutes be found invalid. Without even postulating the central constitutional *wrong* (school inequality resulting from district wealth malapportionment) the Court hypothesizes inability in any event to define the applicable constitutional *right*. But decisions of this Court emphasize that where a state law transgresses equal protection, courts will so rule without necessity for defining to the legislature alternative measures which would meet constitutional requirements. See, e.g., *Williams* v. *Rhodes*, 393 U.S. 23 (and concurring opinion of Mr. Justice Harlan at 48); *Baker* v. *Carr*, 369 U.S. 186.[15] Thus, the degree and character of the edu-

[15] As this Court held in *Baker* v. *Carr*, 369 U.S. at 226, to succeed in an equal protection challenge, litigants need not

> "ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action."

cational inequalities demonstrable in the present case may result in a finding that equal protection has been breached, leaving the legislature free to choose ameliorative measures of school district apportionment or school fund supplementation which would conform with the equality guarantee.

In any event, for purposes of the present challenge, there is no need to invoke either of the constitutional standards the Court below eschews: dollar equality for pupil education, and expenditures tailored to individual educational need. Rather, the dispositive constitutional standard adequate for the case at bar is one which would preclude a state from subjecting some of its children to tangibly inferior public education by reason of school district wealth malapportionment. But whatever constitutional standard may ultimately prevail, the Court below plainly puts the cart before the horse when at the pleadings stage it predicts judicial inability to define any constitutional right of equality in education. This Court was able to define and apply "equality" in the separate but equal cases arising from *Plessy—Sweatt* v. *Painter,* 339 U.S. 629; *McLaurin* v. *Oklahoma State Regents,* 339 U.S. 637—and lower courts applied that rule to entire school systems. See *Brown* v. *Board of Education,* 347 U.S. 483, 486, n. 1; cf. *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836, 899-900, 380 F. 2d 385, 393-394, cert. denied, 389 U.S. 840. It seems equally likely that in the present context a workable constitutional standard will emerge when the principal constitutional points have been clarified by trial proceedings, and that at this stage the problems of judicial competence anticipated by the District Court are entirely conjectural and premature.

iii. Finally, for want of the material facts the ruling below begs the critical constitutional issues. These are issues concerning the inequalities cited by plaintiffs and

the justifications advanced by defendants, and they are numerous: What degree of school district wealth malapportionment exists in Illinois, how did it originate, and what state objectives does it serve? How far is malapportionment in ability to finance education as between school districts reflected in unequal expenditures per pupil, both before and after state equalizing supplements and increased local tax rates? How severe is the actual inequality in public education offered to children in Illinois, particularly as concerns teacher-pupil ratios, qualifications of the teaching staff, educational facilities and resources, school equipment, libraries, laboratories, gymnasiums, and other like indicia? What is the effect of public education inequalities upon pupil achievement—do they systematically affect the children of poorer families so that they are further disabled from overcoming their heritage of poverty? It is these and similarly seminal questions which the Court below entirely obscures, when without benefit of the material facts it purports to decide the ultimate constitutional questions.

CONCLUSION

The mistake of the Court below was in reaching and deciding ultimate constitutional issues at a preliminary stage of the proceedings when meaningful adjudication was not yet possible. In numerous respects the opinion below attests to the wisdom of this Court's *Borden's* stricture against the resolution of complex and novel constitutional issues upon the pleadings. The lower Court's opinion confirms the "salutory principle" that the "essential facts should be determined before passing upon grave constitutional questions. . ." *Polk Co.* v. *Glover,* 305 U.S. 5, 10. To invoke that principle here, this Court can and should reverse and direct a trial, and is free to "intimate no opinion" on the ultimate merits issues at this juncture

(*Ibid.*). This Court, of course, is in no better position to resolve the constitutional questions presented before the material facts have been established by a trial of the case. If the Court were to note probable jurisdiction (or postpone to the merits) it would be inviting detailed briefs by the parties and amici curiae tendering facts which have not met the test of trial evaluation. If, on the other hand, the Court were to affirm or dismiss, lower courts might treat the action as precedent against the constitutional claims being advanced in other pending cases unless this Court's action were rested on procedural or pleading grounds.

We therefore most respectfully suggest that the Court remand this case for a trial to develop the material facts so that the vital constitutional issues presented can be adjudicated through orderly process. Whatever may be the ultimate outcome of the pending and future litigation seeking to redress inequalities in public education, this Court certainly would not want to approve the lower Court's sweeping and premature ruling on the merits of constitutional issues so vital to the future of the nation.

Respectfully submitted,

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APPENDIX

ESTIMATED EXPENDITURE PER PUPIL IN SELECTED ILLINOIS ELEMENTARY DISTRICTS [1]

District Name	Assessed Valuation per average daily attendance	Tax Rate (per $100 assessed valuation)	Total funds (including state supplement payments) per average daily attendance
Flannigan	$112,000	$0.890	$1,084
Millbrook	87,000	0.835	815
Raccoon	75,000	0.838	716
Bryce Ash	65,000	0.860	639
Duncan	57,000	0.935	610
Freedom	52,000	0.764	466
Hill City	48,000	1.067	592
Argo Summit	44,000	1.165	565
Tonica	41,000	0.910	444
Kildeer Countryside	39,000	1.590	724
Irvington	37,000	0.931	434
Belle Valley	35,000	0.897	537
Oskaloosa	33,000	0.858	412
Lotus Country	31,000	1.350	543
Beaver Creek Comm.	29,000	1.120	477
Hines	27,000	1.228	466
Brookfield	25,000	1.457	521
Center Hill	23,000	1.032	429
Lenzburg	21,000	0.849	357
East Maine	19,000	1.650	511
South Stickney	17,000	1.520	470
Mill Shoals	15,000	1.170	410
Opdyke	13,000	1.170	414
Chicage Ridge	11,000	1.395	409
Metropolis	9,000	1.089	379
Albers	6,000	0.838	350

[1] Digested from tables 13, 15 and 17 of Brief in Opposition to Defendants' Motion to Dismiss. Data based on 1965-1966 Foundation Formula and 1964 tax rates.

ESTIMATED EXPENDITURE PER PUPIL IN SELECTED ILLINOIS SECONDARY DISTRICTS

District Name	Assessed Valuation per average daily attendance	Tax Rate (per $100 assessed valuation)	Total funds (including state supplement payments) per average daily attendance
Bellflower	$168,000	$0.562	$1,012
Malden	108,000	0.937	1,136
Neponset	93,000	1.019	1,064
Cornell	85,000	0.957	962
Rochelle	77,000	0.857	749
Woodstock	74,000	0.836	728
Antioch	68,000	0.958	797
Henry-Senachwine	65,000	0.857	655
Bradley-Bourbonnais	62,000	0.895	637
Tower Hill	59,000	1.020	711
Glenbard	56,000	1.178	730
Lisle	54,000	1.128	676
Fenton	51,000	1.208	684
Grayslake	48,000	1.304	748
Cowden	45,000	1.208	640
Flora	42,000	1.008	507
Rock Falls	39,000	1.230	567
Sumner	37,000	1.163	550
St. Francisville	32,000	1.230	545
Riverton	29,000	1.077	441
Alto Pass	26,000	1.210	480
Christopher	24,000	1.230	482

ESTIMATED EXPENDITURE PER PUPIL IN SELECTED ILLINOIS UNIT DISTRICTS

District Name	Assessed Valuation per average daily attendance	Tax Rate (per $100 assessed valuation)	Total funds (including state supplement payments) per average daily attendance
Monticello	$114,000	$0.524	$672
Hartsburg-Emden	46,000	1.509	792
New Holland	42,000	1.467	712
Melvin-Sibley	38,000	1.475	643
Stanford	36,000	1.504	623
Waverly	32,000	1.520	577
Hopedale	30,000	1.535	557
Spoon River Valley	28,000	1.634	572
Manteno	26,000	1.520	540
Mahomet	24,000	1.520	521
Chicago	23,000	1.856	585
Genesco	22,000	1.416	469
Pleasant Hill	20,000	1.520	491
Rock Island	18,000	1.491	475
Comm. Unit School (Robertson)	16,000	1.520	451
North Green Unit	14,000	1.770	477
Marseilles	12,000	1.680	440
Pope County Comm. U.	10,000	1.520	439
Cobden	8,000	1.520	407
Bethalto	7,000	1.670	405
Brookport	3,000	1.520	366

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1033

LINDA McINNIS et al.,
Appellant,

vs.

SAMUEL H. SHAPIRO, et al.,
GOVERNOR OF THE STATE OF ILLINOIS,
Respondent.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Motion for Leave to File Brief of Amici Curiae re Jurisdictional Statement of Appellants and Brief of Amici Curiae re Jurisdictional Statement of Appellants

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LEAGUE OF WOMEN VOTERS OF ILLINOIS
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In the Supreme Court of the United States

OCTOBER TERM, 1968

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Motion for Leave to File Brief of Amici Curiae re Jurisdictional Statement of Appellants

SAN FRANCISCO NEIGHBORHOOD LEGAL ASSISTANCE FOUNDATION
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CHICAGO REGION OF THE ILLINOIS CONGRESS OF PARENTS AND TEACHERS
SOUTH SUBURBAN HUMAN RELATIONS COUNCIL
INTER-COMMUNITY PROGRAMS, INC.
CALIFORNIA RURAL LEGAL ASSISTANCE
SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC.

The undersigned hereby move for leave to file the attached brief relating to the jurisdictional statement of appellants.

INTEREST OF AMICI CURIAE

The undersigned represent a number of persons and organizations all of whom have been involved for some time in various ways in the problem of public school financing.

Attorneys for the San Francisco Neighborhood Legal Assistance Foundation and the Western Center on Law and Poverty represent plaintiff school children who are in a class action challenging the financing structure of the California public education system on equal protection grounds. A demurrer was sustained to the complaint in that case on the sole authority of the district court opinion in *McInnis v. Shapiro.*

Attorneys for plaintiffs in *Serrano*[1] are currently preparing an appeal to the California District Court of Appeal. The ultimate decision in *McInnis* is likely to determine the result in *Serrano v. Priest,* as it has already done at the complaint stage in the lower court. Accordingly, the disposition of *McInnis* also may well determine the quality and structure of California public education for years to come. Accordingly, California Rural Legal Assistance, representing the rural poor of California, are interested in *Serrano v. Priest.*

The American Jewish Congress and the National Association of Social Workers, as national organizations, and the League of Women Voters of Illinois, the Chicago Region of the Illinois Congress of Parents and Teachers, South Suburban Human Relations Council, Inter-Community Programs, Inc., as local organizations, have been specially concerned with the improvements of the quality of education and the advancements of equality of educational

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1. *Serrano v. Priest,* No. 938254, Sup. Ct. of Calif., Los Angeles, County, decided January 13, 1969.

opportunity for children of all races and creeds. An outgrowth of that concern is the participation of the aforementioned groups with the exception of the Chicago Region of the Illinois Congress of Parents and Teachers, in an Amici Curiae Brief filed with the District Court in the instant case.

The American Jewish Congress has 23 Illinois membership chapters in Greater Chicago. The League of Women Voters of Illinois is a nonpartisan voluntary organization embracing 76 local chapters with an aggregate membership of approximately 9,000 citizens of Illinois. The South Suburban Human Relations Council is an umbrella organization effective in 51 South Cook County communities in coordinating and supporting local human relations councils and civil rights groups. The National Association of Social Workers is a professional organization of 50,000 social workers having a Master's degree in such work. Unequal education, defacto segregation, the need for community schools and compensatory education have been of long standing concern to that group. Inter-Community Programs, Inc. is an organization devoted to the development of experimental educational programs, particularly those involving utilization of the resources of the entire metropolitan area. The Scholarship, Education and Defense Fund for Racial Equality, Inc. has scholarship and leadership training programs and legal service activities devoted to the interest of persons who are discriminated against because of their race or economic condition.

The undersigned are concerned because the current procedural posture of the instant case (i.e., a determination without any evidence being presented) will make it almost impossible for the court in other states to know and understand the basis of the *McInnis* result. We are also con-

cerned because we believe that the court below has misunderstood the issues and the applicable law.

Finally, we believe it important that, in determining whether to give the appeal plenary consideration, and in determining the merits (if they are reached) the Supreme Court have the opportunity to appraise the impact of the decision on other states.

Accordingly, we request leave to file the attached brief.

Dated: February 5, 1969.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No.

LINDA McINNIS et al.,
Appellant,

vs.

SAMUEL H. SHAPIRO, et al.,
GOVERNOR OF THE STATE OF ILLINOIS,
Respondent.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Brief of Amici Curiae re Jurisdictional Statement of Appellants

SAN FRANCISCO NEIGHBORHOOD LEGAL ASSISTANCE FOUNDATION
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LEAGUE OF WOMEN VOTERS OF ILLINOIS
CHICAGO REGION OF THE ILLINOIS CONGRESS OF PARENTS AND TEACHERS
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INTER-COMMUNITY PROGRAMS, INC.
CALIFORNIA RURAL LEGAL ASSISTANCE
SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC.

The nature of the interest of amici curiae is stated in the attached motion and is incorporated herein.

SUMMARY OF ARGUMENT

I

The decision below was based largely upon factual assumptions not appearing in the complaint, and without evidentiary support. The court simply assumed that there were rational explanations in fact for the gross differences in expenditures by Illinois upon school children. It further assumed, without any expert testimony (or even any evidence as to how the financing scheme operates in fact) that there were no judicially manageable standards. In this procedural posture, summary disposition of the appeal by the Supreme Court would be based on inadequate information and would provide limited guidance for similar litigation now in the lower courts. Therefore, the Supreme Court should note probable jurisdiction and either postpone plenary consideration in order to permit consolidation with other cases, or reverse the lower court.

II

The court below erred in failing to balance relevant factors, such as the irreparable harm to school children, the availability of alternative methods of achieving the state's goals, and the fundamental nature of the right to an education. Instead, it implicitly and incorrectly assumed that a "rational explanation" for the financing scheme was automatically a constitutionally adequate justification for the widely disparate amounts of money spent from school district to school district.

III

The complaint pleads sound causes of action under applicable law. It alleges that education is a state responsibility, and that as a result of the way in which the state has structured its financing system around "school districts," children within the state receive unequal educational opportunity depending on the accident of the wealth (tax base) of the school district in which they reside.

ARGUMENT

I. The Supreme Court Should Reverse Because the Court Below Was Procedurally Incorrect in Sustaining a Demurrer on the Basis of Assumed Facts Which Had No Evidentiary Basis.

The court's only function at this initial procedural stage was to assume that all allegations of the complaint were true and then to determine whether plaintiffs had pleaded a cause of action. The court below failed to do this. It clearly erred in assuming as true facts outside of the complaint and wholly without evidentiary support. Moreover, the court did this not once, but twice. With no evidence before it, the court below assumed that in fact there was a rational basis for the financing structure of the public educational system. And without giving plaintiffs an opportunity to present expert testimony or any evidence, and without a single first-hand account of even how the financing system operates, the court then further assumed that there were no "judicially manageable standards so as to make the controversy justiciable." The extraordinary action of the court below in deciding a case at the complaint stage on the basis of facts never presented is not only procedurally incorrect and increases the chances of the court being wrong as to the facts, but makes it impossible to know the basis of the court's decision. This Court has previously indicated the vices inherent in a premature resolution of constitutional issues—*Rescue Army v. Municipal Court,* 331 U.S. 549 (1947); *Borden Farm Products Co. v. Baldwin,* 293 U.S. 194 (1934).

For example, suppose a plaintiff in California should seek to have an expert witness testify about a clear and efficient formula (hypothetical formula "Z") which would provide a judicially manageable standard and would not contain the invidious discriminations of the present system. (Plaintiffs in California have specifically alleged that just

such alternative formulas exist which would not violate the equal protection clause). Is the California court to assume that formula "Z" was considered by the court below in the instant case? No court will ever know, since plaintiffs in the instant case were not given an opportunity to put on any evidence.

Similarly, the court below states "where differences do exist from district to district, they can be explained rationally." Aside from the court's error in seeking to justify an invidious discrimination by a "rational basis" what "explanations" were considered by the court? For example, is the state's desire to encourage local educational experimental programs one reason for differences in expenditures from district to district? If so, has a single experimental program ever emerged in fact as a result of giving one school district twice as much as other districts? Indeed, is there any basis in fact for the assumption that local control of schools requires that each school district expend upon itself the money it raises within its own district? The evidence might well show that in some states there is no "local control" in any realistic sense, and that the state already controls curriculum, hiring, textbooks, and every other important detail of the educational process. If so, local control as a rational basis for the financing scheme may prove to have no basis in fact. Worse, if the instant case were to be affirmed, the court in California will have no way of determining whether the particular "rational basis" advanced by the California legislature to justify its financing structure was considered at all by the Three-Judge District Court below. Moreover, when the California court seeks to balance the proposed justification for its school financing scheme against the inequities of that scheme, the California court will not know how serious the

injustices were in fact in the Illinois schools. In short, the California court, like any other court in a similar case, will not know the harm to children considered by the Illinois court.

The decision below was simply procedurally incorrect. See generally, Karst, *Legislative Facts in Constitutional Litigation,* 1960 The Supreme Court Review 75 (1960). Moreover, by reversing that decision, this Honorable Court will allow evidence to be presented which will not only (1) decrease the substantial chances of the court below being factually mistaken, and (2) provide this Court with the data essential to reaching an informed judgment but which will (3) provide an evidentiary basis so that other courts can be guided by the ultimate decision. See *United States v. International Union,* 352 U.S. 567 ( ). At the same time, other cases (already filed) will be presented and argued in at least Texas, California, Virginia and Michigan, each with a somewhat different financing structure, different complaint, and different theories. Accordingly, assuming that this Court reverses and the matter comes before it again, this Court will then (in place of the present utterly barren record) presumedly have the assistance of several lower court decisions, numerous briefs and substantial evidentiary records.

II. The Court Below Erred In Assuming That a Rational Explanation for Differences from District to District Would Constitutionally Jusify Discrimination on the Basis of Wealth and Geography.

The court below argues that the existing financing scheme, which provides school children with wealthy neighbors (i.e., higher tax base) a far superior education to poor children (i.e., school district with low tax base) does not violate the equal protection of the laws because such an

unequal system can be "explained rationally." Such an argument involves a miseonception of both the facts and the applicable law.

1. A "rational basis" will not validate discrimination based on wealth or race. *Brown v. Board of Education,* 347 U.S. 483 (1954); *Griffin v. County School Board,* 377 U.S. 218 (1964); *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966) (poll-tax); Griffin v. Illinois, 351 U.S. 12 (1956); *Jackson v. Pasadena City School District,* 59 California 2d 876 (1963); *Douglas v. California,* 372 U.S. 353 (1963).

2. A "rational basis" will not justify an unequal application of the laws where fundamental rights of citizenship, such as education and voting, are involved. Each of the above cases will support the foregoing statement of law. See also *Reynolds v. Sims,* 377 U.S. 533 (1964) and *William v. Rhodes,* 89 Supreme Court 5 (1968) (Wallace on ballot). As the court said in *Brown,* 347 U.S. 483 at 493:

> "Education is perhaps the most important function of states and local governments... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

Denial to some children of substantial equality of educational opportunity is denial irreparably to those children of an equal opportunity "to succeed in life." This is the interest which is being infringed by the present method of financing public education in many states, including Illinois and California. The opinion of the court below contends that plaintiffs can be constitutionally subjected to this injury if there is a "legitimate legislative policy" supporting the scheme. As a matter of law, that is simply not so.

3. Geographical variations within a state based on local governmental lines are not a constitutionally adequate basis for substantial inequalities in educational opportunity or voting. *Reynolds v. Sims, supra; Griffin v. County School Board of Prince Edward County, supra.*

4. Plaintiffs cannot be deprived of the equal protection of the laws (even if there is a "rational basis") if the state has available to it a less onerous alternative. This principle was applied, for example, in *Carrington v. Rash,* 380 U.S. 89 (1965), which held invalid under the equal protection clause a denial by Texas to some servicemen of the opportunity to vote. Texas had a rational basis for doing so; instances of servicemen from other states who could prove bona fide residence in Texas would be too infrequent to justify the administrative costs of going into individual cases.

"States," the Court said, "may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State," the Court pointing out that Texas had devised procedures to make individual determinations of residence with respect to other categories of individuals who might be only temporarily in the state. 380 U.S. at 96. This principle has more recently been applied in an education context in *Green v. County School Board of New Kent County, Virginia,* 88 Sup. Ct. 1689 (1968) (freedom of choice desegregation plan-alternatives available).

5. In the constitutional sense, there is no "legitimate legislative policy" or a "rational basis" supporting the financing scheme because giving school districts widely disparate amounts of revenue bears no reasonable relationship to any educational purpose. Although it is emotionally appealing to talk about "local control," "local responsibil-

ity," and "experimentation," there is no rational reason why all of those goals cannot be accomplished without the onerous discriminations of the present scheme. Equally important, the state has not (and cannot) advanced any rational reason why one school district must have two or three times as much as another district to further those goals. Finally, the system has no rational basis because the larger sums do not go to the children with greater educational needs. On the contrary, it is obvious that the children with the greatest educational needs, those living in large urban areas, poverty communities, and minority group ghettos, are receiving (under the financing scheme) the most inadequate education.

III. The Complaint Pleads Sound Causes of Action Under Applicable Law.

The state has assumed responsibility for educating its children. It chooses to carry out this most crucial duty by creating school districts to provide education for all children residing therein. These schools are financed through the joint effort of the state and local governments. The locally raised funds primarily come from property taxes, and these local funds determine the quality of educational opportunity that is provided within that school district. This scheme of financing results in some children receiving grossly inferior educational opportunity as compared with other children in the state. The scheme is one which discriminates against children on the basis of where they live and the wealth of the school district in which they live.

Equality of educational opportunity is an interest of critical significance to Illinois, to California, and the whole of society.

The injury to the children who receive an inferior education is of major import. These are the children who will

grow up unprepared to engage in self-supporting occupations, who will be unable to form stable family relationships, who will not participate in voting or governing and who will be unable to give *their* children a better start in life. The state, having assumed this vital responsibility, is required by the U. S. Constitution to provide equal educational opportunity to all of its children regardless of race, creed, wealth or geographical location. *Brown v. Bd. of Educ., supra; Griffin v. County School Board, supra; Hall v. St. Helena Parish School Board,* 197 F. Supp. 649 (Ed. La. 1961), *Aff'd* 368 U.S. 515 (1962). The State cannot avoid this constitutional guaranty by delegation to smaller units. *Hall v. St. Helena, supra.*

This scheme creates de facto wealth classifications which have been rendered suspect at best by *Harper v. Va. Bd. of Elections, supra,* and the long line of criminal procedure cases beginning with *Griffin v. Illinois, supra.* Such wealth classifications may stand only if there exists constitutionally adequate justifications. The purposes served by the local school districting do not justify the particular districting in Illinois, except to the extent that the districting scheme is designed to discriminate by wealth, and that kind of design is clearly impermissible under the Fourteenth Amendment.

This scheme of financing also results in de facto discrimination against minority groups. The minority groups in our society are disproportionately among the poor. These are the same people who are now restricted by this scheme to an inferior education. The system intensifies all the problems inherent in segregation, and creates an educational system in the State closely analogous to the "track system" found unconstitutional in *Hobson v. Hanson,* 269 F. Supp. 401 (DDC 1967). Discrimination based on race or nationality

in many of its guises, has been held repeatedly unconstitutional in *Brown v. Bd. of Educ., supra* and its progeny.

This scheme further creates discrimination based on geographical location. Such geographical weighting may be the result of a so-called "rational" scheme and yet be unreasonable and unconstitutional. *Reynolds v. Sims, supra.* As the Court said this does

> "not necessarily mean that . . . [the] plan is irrational . . . We conclude simply that . . . [the] plan is impermissible for the States under the Equal Protection Clause . . . ." 377 U.S. at 533.

The child's educational opportunity may not be diluted or destroyed because he happens to live in one place rather than another. *Griffin v. County School Bd., supra; Hall v. St. Helen's Parish, supra.*

CONCLUSION

The court below erred in procedurally assuming facts not in evidence and in sustaining the demurrer without testimony as to judicially manageable standards or even evidence as to how the financing structure operates in fact. The court erred substantively in finding that a rational explanation was sufficient to justify an admitted unequal treatment of school children. There is no evidence before the court of a significant rational basis for the present scheme of financing. Moreover, even if there were, a "rational basis" is not automatically a constitutionally adequate basis. See also *Reynolds v. Sims,* 377 U.S. 533 (1964). When a system of classification inflicts injury of a significant magnitude, and certainly when there are alternative means to achieve legitimate governmental goals by using means which inflict less or no injury the classification scheme is unconstitutional. *Carrington v. Rash,* 380 U.S. 89 (1965);

Shelton v. Tucker, 364 U.S. 479 (1960); *Douglas v. California,* 372 U.S. 353 (1963); *Anders v. Calif.,* 386 U.S. 738 (1967); *Green v. School Board,* 88 S. Ct. 1689 (1968); *Reitman v. Mulkey,* 387 U.S. 369 (1967); *Hobson v. Hanson, supra.*

There are alternative means available for government to achieve the legitimate goals advanced by local school districting while lessening the magnitude of injury to plaintiffs. In other words, several possibilities exist which will permit local control and still provide equal educational opportunity. A discussion of some of these alternatives is contained in the Amici Brief of Coons, Clune, and Sugarman, filed in the instant case. Where governmental action creates inequality of educational opportunity, the State has an obligation to use all reasonably feasible means of ameliorating the inequality while advancing other purposes. *Jackson v. Pasadena School Bd.,* 59 Cal.2d 876, 382 P. 878 (1963); *Green v. County School Board,* 88 S. Ct. 1689 (1968); *Hobson v. Hanson, supra.* Accordingly, this Court should note probable jurisdiction and either postpone consideration on the merits or reverse the lower court.

Dated: February 5, 1969.

Respectfully submitted,

SIDNEY M. WOLINSKY
Attorney for Amici Curiae

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1033

LINDA MCINNIS, ET AL.,
Appellants,

v.

RICHARD B. OGILVIE, ET AL.,
Appellees.

On Appeal from the United States District Court, Northern District of Illinois, Eastern Division

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MOTION FOR LEAVE TO FILE BRIEF FOR

The Urban Coalition
National Education Association of the United States
The Research Council of the Great Cities Program For School Improvement
The Lawyers' Committee for Civil Rights Under Law

AS AMICI CURIAE

In Support of the Jurisdictional Statement

The Urban Coalition, National Education Association of the United States, The Research Council of the Great Cities Program for School Improvement, and the Lawyers' Committee for Civil Rights Under Law, hereby respectfully move for leave to file a brief in support of the Jurisdictional Statement in the above-entitled case. Counsel for Appellants have consented to the filing of the attached brief. Counsel for Appellees have not consented to its filing.

The interests of Amici and their reasons for requesting leave to file are as follows:

1. The Urban Coalition, a private non-profit corporation whose goal is the revitalization of America's cities, has established as one of its major objectives the extension of quality education, particularly to those students from disadvantaged backgrounds. Essential to this task is the removal of the gross inequities resulting from State education finance formulas which presently favor suburban areas at the expense of urban centers. The present case challenges the education financing system of the State of Illinois. However, the factual pattern which the case presents and the important Constitutional issues it raises extend to metropolitan centers across the nation. It is for this reason—because of the importance of this case to the future of American urban education—that the Urban Coalition requests leave of this Court to file the attached brief.

2. The National Education Association of the United States, founded in 1857, is a corporation which was chartered by special act of Congress in 1906. Its membership embraces more than one million professional educators throughout the United States and its territories. The purpose of the organization is to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States. In furtherance of this purpose the Association has long worked to insure the adequate and equitable financing of public education throughout the nation. The NEA has worked for more than a century to provide equal educational opportunity for all American children. Though the present case challenges only the educational financing system of Illinois, it raises the applicability of the Equal Protection Clause to State allocation of resources to school children, an issue which has major implications for the financing of public education in every community, urban, suburban and rural, of America. The pendency of similar suits and the complex nature of the

facts in each one make it highly desirable that a full record in this case, upon which this Court can resolve the Constitutional issue and enunciate judicial standards, be developed. For all these reasons the National Education Association of the United States joins in requesting leave of this Court to file the attached brief.

3. The Research Council of the Great Cities Program for School Improvement, incorporated in 1961 as a non-profit organization, is comprised of twenty of the largest city school districts in the United States. Member cities include Baltimore, Boston, Buffalo, Chicago, Cleveland, Columbus, Dallas, Denver, Detroit, Los Angeles, Memphis, Minneapolis, Milwaukee, New York, Philadelphia, Pittsburgh, St. Louis, San Diego, San Francisco and Washington, D. C. The activities of the Council are governed by a board of directors composed of one member of the Board of Education and the Superintendent of Schools from each participating city. The organization seeks to meet the comprehensive public school needs and to improve every facet of education in its member cities. A major concern of the Research Council has been the increasing disparities in financial support to education in urban centers as compared to suburban areas. Because of its belief that such discriminatory treatment of urban centers threatens to severely handicap vast numbers of city school children in the cities it represents, the Research Council respectfully requests leave of this Court to file the attached brief.

4. The Lawyers' Committee for Civil Rights Under Law, a non-profit private corporation organized in 1963, has become increasingly concerned with urban problems. In 1968 the Committee initiated an Urban Areas Project with the aid of a grant from the Ford Foundation. In close cooperation with the Urban Coalition, the Committee's national and local offices have actively engaged the service of lawyers in an attack upon urban problems in such areas as education, housing, and economic develop-

ment. In the field of education, a National Task Force, established to concentrate on a variety of educational issues, has begun to study and assess efforts directed to the reform of educational financing. The Committee's interest in the present case arises from these concerns.

Having examined the issues presented by this case from a national perspective, and having concluded that a proper Constitutional standard exists to govern the conduct of Illinois and other States, Amici respectfully request that this Court grant leave to file the attached brief which focuses on that standard.

Respectfully submitted,

ARTHUR H. DEAN
LOUIS F. OBERDORFER
FREDERICK A. BALLARD
JOHN B. JONES, JR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

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Appellees.

On Appeal from the United States District Court, Northern District of Illinois, Eastern Division

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BRIEF FOR

The Urban Coalition
National Education Association of the United States
The Research Council of the Great Cities Program for School Improvement
The Lawyers' Committee for Civil Rights Under Law

AS AMICI CURIAE

In Support of the Jurisdictional Statement

QUESTION PRESENTED

Whether the lower court erred in dismissing for failure to state a cause of action, Plaintiffs' claim that Illinois statutes governing the financing of public school education violate the Equal Protection Clause of the Fourteenth Amendment by creating a system under which per stu-

dent expenditures are dependent upon the value of taxable property within school districts of widely differing tax bases, thereby depriving students in poor school districts of the educational resources available to students in more wealthy districts.

PROCEEDINGS BELOW

Plaintiffs brought this class action before a three judge district court in the Northern District of Illinois. They charged that the State of Illinois, committed by its Constitution to provide public education for all students,[1] had violated the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution by creating a system for financing public education which provides to Plaintiffs' school districts per pupil expenditures "far below" those provided in other districts in the State.[2] Plaintiffs charged that despite the fact that, as the district court conceded, "nearly three-quarters of the revenue comes from local property taxes," [3] and despite the fact that great disparities exist between assessed values of taxable property in various school districts (ranging from $114,000 per pupil in the Monticello district to $3,000 in Brookport),[4] Illinois laws for the financing of public education use such property valuation as the principal basis

[1] The State has undertaken the obligation to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." Ill. Const. Art. VIII, § 1.

[2] Plaintiffs' Amended Complaint (hereinafter cited as "A.C."), ¶ 15. Since the court below dismissed Plaintiffs' complaint for failure to state a cause of action, Plaintiffs' allegations must, of course, be accepted as true.

[3] Appendix to Plaintiffs' Jurisdictional Statement (hereinafter cited as "Pl. App." and "J.S." respectively) at 7.

[4] Illinois Task Force Report, EDUCATION FOR THE FUTURE OF ILLINOIS 115 (Table 17) (1966) (hereinafter cited as "TASK FORCE REPORT"), reproduced in the Appendix to Plaintiffs' Brief in Opposition to Defendants' Motion to Dismiss (hereinafter cited as "Opposition").

for determining per pupil expenditure, and fail to provide for State supplements to rectify the resulting discrimination.[5] The district court, while conceding its jurisdiction, dismissed the amended complaint on the ground that it failed to state a cause of action. It interpreted the complaint, Amici believe erroneously, as *requiring* a determination that the Federal Constitution compels States to allocate school funds "only on the basis of pupils' educational needs." (Pl. App. at 6).

The court recognized that there "are wide variations in the amount of money available for Illinois school districts, both on a per pupil basis and in absolute terms," and that "presumably, students receiving a $1000 education are better educated than those acquiring a $600 schooling." Yet, the court found the Illinois statutes neither discriminatory nor arbitrary (Pl. App. at 6-7). It further stated that it could discern no "judicially manageable standards" upon which to grant relief.

Plaintiffs' timely appeal to this Court thus prays the Court to consider the substantial question presented by Plaintiffs' claim that the Illinois system for financing public school education, under which per pupil expenditure for education is much greater in school districts where property values are high than in Plaintiffs' school districts where such values are lower, violates the Equal Protection Clause.

STATEMENT

Illinois has assumed in its Constitution the obligation to provide public education for all children in the State.[6] The present appeal raises in this Court, for the first time,

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[5] Illinois law equalizes the *rate* at which property values may be assessed throughout the State. Ill. Rev. Stat. ch. 120, §§ 627 *et seq.* (1967). The disparities charged by Plaintiffs arise from differences in the real value of taxable property from district to district and not from differing rates at which that property is assessed.

[6] See note 1, *supra.*

the severe inequalities which flow from the financial methods by which Illinois has chosen to fulfill that obligation. These financial inequities arise because the power of local school districts to provide revenue for education is greatly limited by a factor irrelevant to education: the wide variations in the value of taxable property from district to district, which range, as noted above,[7] from $114,000 per pupil in Monticello to $3,000 in Brookport.

Plaintiffs' school districts, and the other school districts in Illinois, raise money and otherwise receive financial support in accordance with a multitude of State laws. The principal provision for public school funds is the State law authorizing each school district to impose a tax upon property within the district at any rate up to a specified ceiling.[8] The school districts in which Plaintiffs reside have set such property tax rates near the upper limit permitted by Illinois law. (A.C., ¶ 14). Accordingly, Chicago, a district in which two Plaintiffs reside, taxes at a 1.9% rate,[9] only 0.1% below the rate ceiling set for Chicago by State law.[10] Yet, despite these tax rates, Plaintiffs' districts can collect much less revenue per pupil than other districts because valuation of taxable property per pupil within them is so much lower. Thus, while Chicago, taxing at the ceiling rate of 2.0%, could obtain $460 per pupil, Monticello, which in fact only taxes at a rate of 0.5%, could obtain $2,280 per pupil at a 2.0% rate.[11] Thus, the necessary result of the wide variation in the value of taxable property per pupil, and statutory reliance on the value of district property as the primary source of

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[7] See page 2, *supra*.

[8] Illinois Rev. Stat. ch. 122, §§ 17-3, 34-54 (1967) (unless otherwise noted, all subsequent citations to Illinois statutes are to sections of ch. 122).

[9] TASK FORCE REPORT at 115 (Table 17).

[10] § 34-54.

[11] TASK FORCE REPORT at 115 (Table 17).

revenue, is wide variation in per pupil expenditure from district to district. As the court below indicated, the difference between high and low pupil expenditure per annum in elementary school districts is in the ratio of 3.0 to 1; in high school districts, 2.6 to 1; unit districts (grades 1-12), 1.7 to 1.[12]

Further, while the State supplements the school funds raised locally by property taxes collected pursuant to State law, those payments, from a State Common School Fund derived from State revenues other than the district property tax, fail to equalize the disparities resulting from the basic property tax element in the school funding machinery. Thus, the "flat" grant, which provides each district with an equal supplement for each of its students in average daily attendance,[13] has no effect on the per pupil expenditure disparity between districts with high property values and those with lower ones. Indeed, as detailed below, the grant serves to aggravate that disparity.

The "equalizer grants," also provided for by statute from the Common School Fund, do not correct the discrimination between pupils in wealthy districts and those in poor ones. While such grants provide that the State will make available to districts the difference between a $400 per pupil revenue [14] and the amount raised by taxing at a statutorily defined minimum tax rate plus the flat grant, the poorer districts cannot compensate for the inequalities in funding produced by inter-district variations in property values. Additionally, because the equalizer grant is awarded after the flat grant is added to local revenues

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[12] Pl. App. at 7. Unless otherwise noted, all subsequent references to per pupil expenditures refer to per annum figures.

[13] $54.05 per high school student and $47 per elementary school student. § 18-8.

[14] TASK FORCE REPORT at 113 suggests that the expenditures required for minimally adequate education should be $600 for elementary school students and $750 for high school students.

raised at the qualifying rate, the wealthy districts benefit in full from the flat grant, whereas the poor districts receive a reduced benefit or none at all.[15]

Hence, despite State assistance, the amounts spent on education per student in Plaintiffs' school districts are still "far below" expenditure in other Illinois districts.[16]

As Plaintiffs directly allege (A. C., ¶ 16),[17] students in Plaintiffs' districts suffer severe disadvantages relative to students in more affluent districts because the value of the property within each of those districts, in proportion to the number of students in each, is below the comparable valuation in other districts in the State.[18] Thus, the suggestion of the court below[19] that the inter-district expenditure differentials are or may be due to the low value Plaintiffs' districts attach to education, compared to either the values these districts place on other district

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[15] *See* the Appendix to this brief for a detailed explanation of the education financing statutes.

[16] *See* note 2, *supra*. It should be noted that this statement is true notwithstanding federal aid.

[17] For example, the Appendix to the Amended Complaint, Table I, indicates that the property valuation per student in the Posen district where Plaintiff Cobler attends school, is *less than half* what it is in over 50% of all districts, and *less than one-third* what it is in over 25% of all districts.

[18] As regards the financing of capital plant, students in the poorer districts could suffer even greater inequalities. This conclusion results from the great inter-district inequality in the value of taxable property and the fact that there is no State aid given for capital expenditures. (This situation was criticized in the TASK FORCE REPORT which found that the absence of State aid for capital outlay had led to "inadequate facilities. . . [and] deficiencies which directly restrict educational programs and services" [p. 129]). While the capital needed for school district investment can be raised either by the levying of a further property tax for capital purposes or by the issuance of school district bonds, rather than the property tax, the latter must, of course, eventually be levied in order to service the bonds' principal and interest.

[19] Pl. App. at 10-11.

needs or the value other districts place on education, is completely unwarranted; Plaintiffs' districts have been spending almost all the law permits them to spend on their students' education, and have assumed a tax burden, in terms of tax rate, as heavy as or heavier than the like burden assumed by most other districts in the State.

As a result of the inequalities in financial support outlined above, the "educational programs, facilities, and services" available in Plaintiffs' districts are decidedly poorer than those provided in other districts in the State (A.C., ¶ 16), and as a direct result, the education received by Plaintiffs is decidedly inferior and unequal (A.C., ¶ 18).[20]

While the variations in the value of taxable property per student in Illinois, from $114,000 to $3,000, would be serious enough if confined to that State alone, it appears that such variations are not so confined.[21] In Michigan, for example, the valuation of taxable property per student ranges from $53,156 in River Rouge to $1319 in Forsyth;[22] in California, from $306,077 in Big Creek to

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[20] As noted at page 3, *supra*, the court below itself concluded that "[p]resumably, students receiving a $1000 education are better educated than those acquiring a $600 schooling." (Pl. App. at 6-7).

[21] For state by state figures, *see* U.S. Office of Education, PROFILES IN SCHOOL SUPPORT: A DECENNIAL OVERVIEW 14-65 (1965), the data from which are charted in Wise, The Constitution and Equal Educational Opportunity, THE QUALITY OF INEQUALITY: URBAN AND SUBURBAN PUBLIC SCHOOLS 27-29 (Daly ed. 1968). *See also*, Benson, THE CHEERFUL PROSPECT ch. 2 (1965); U.S. Commission on Civil Rights, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 25-31 (1967); Wise, RICH SCHOOLS, POOR SCHOOLS (1969). While statistics from States other than Illinois are not part of the Record on appeal, Amici respectfully suggest that this Court should take judicial notice of these published statistics from scholarly sources and the national dimensions of the problem which they underscore.

[22] Thomas, SCHOOL FINANCE AND EDUCATIONAL OPPORTUNITY IN MICHIGAN 20 (1968).

$3698 in Olinda;[23] in New York, from more than $200,000 to less than $5,000.[24] Similarly, expenditures per pupil also differ widely. In California, they range from $1353 to $265;[25] in New York, from $1600 to $470.[26]

Moreover, it seems to be the inner city schools which suffer disproportionately compared to their suburban counterparts. Dr. Conant found that while the latter often spent $1000 per student, the former typically received less than half that sum.[27] Nationally, spending levels in suburban schools average almost 30% in excess of the average for city schools ($573 to $449).[28] In Los Angeles, the city-suburb averages are $424-$654; in Houston, $311-$794; in Buffalo, $507-$777.[29] It has been stated that the underfinancing of city schools "has become America's most serious school problem."[30]

Such financing systems in Illinois and elsewhere have produced severe disparities between the amount of money spent on education for students in poor and wealthy localities within a given state. Because of such limitations

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[23] *See* Appendix A to the Complaint in *Serrano* v. *Priest*, No. 938254, Calif. Super. Ct., L.A. County, dismissed on the authority of the opinion below in the instant case.

[24] Allen, The State, Educational Priorities, and Local Financing, INTEGRATED EDUCATION, Sept.-Oct. 1968, pp. 55, 59.

[25] *See* Exhibit A to the Complaint in *Serrano*, *supra*, note 23.

[26] *See* Allen, *supra*, note 24, at 58.

[27] This "jolts one's notions of the meaning of equality of opportunity." Conant, SLUMS AND SUBURBS 2-3 (1961).

[28] Campbell, Inequities of School Finance, SATURDAY REVIEW, Jan. 11, 1969, p. 44.

[29] For these and other cities, *see* Advisory Comm'n on Intergovernmental Relations, 2 REPORT ON METROPOLITAN FISCAL RELATIONS Table 5 (1967).

[30] Keppel, THE NECESSARY REVOLUTION IN AMERICAN EDUCATION 80 (1966).

on local resources, poorer school districts offer inferior educational facilities in terms of class size, teacher training and quality, remedial programs, physical condition of school buildings, quality and quantity of textbooks, science equipment, language laboratories, physical education facilities, counselling and psychological assistance, and other significant facilities and services.[31] As it functions in Illinois, such a system is, as we argue below, unconstitutional.

ARGUMENT

I. The Court Below Failed To Apply The Appropriate Constitutional Criteria And To Analyze Adequately The Constitutional Significance Of The Central Fact That Wide Inter-District Variations In The Value Of Taxable Property Are Responsible For The Educational Inequalities Plaintiffs Allege.

It is the position of Amici that the court below erred in two respects. First, it erred in finding that Illinois education financing statutes were Constitutional under the "reasonableness" standard which it applied. Whatever may be the rational reason for having a statewide school system set up and financed through local subdivisions of the State,[32] no Constitutional justification exists for the financing of public education in such a manner that the amount of public funds available for a child's education depends upon the property values of the neighborhood in which he lives. Secondly, the court below applied the incorrect standard for determining the Constitutionality of the financing statutes. Where fundamental Constitutional rights are involved, as we argue below, even those statutes for which some rational basis might be advanced,

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[31] *See* Conant, *supra*, note 27; Keppel, *supra*, note 30, at 17; Thomas, *supra*, note 22, at 22.

[32] Numerous rational, and Constitutionally acceptable, reasons for the use of local school districts as administrative organs exist and Amici expressly disclaim any intention of challenging their continued use.

will be held invalid if they result in substantial discrimination—as in the present case—particularly where reasonable alternatives are available, as they are here.

In justifying the Illinois system of state school finance because it represented a system of local control [33] which legitimately allowed local communities to fix their individual tax burdens and to decide how highly they valued education, the lower court failed to give adequate weight to Plaintiffs' allegation that their school districts had levied education taxes near the upper limit permitted by Illinois law,[34] and that the educational disparities from which they suffer arise, not from any lack of interest in education, but from the low value of taxable property in their school districts, in relation to the number of students living in them.[35] The State failed to show, and the court erred in finding, that these disparities in taxable property valuation, which the Illinois system of school finance has made determinative of the financial resources available

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[33] It should be noted that the lower court failed to distinguish between local control of administrative functions and revenue raising on a local level. It failed to recognize that the former was not at issue in the lawsuit, and that it was only the latter which was the subject of Plaintiffs' challenge. Prominent authorities are of the opinion that a system of local policy-making and control in no way requires or presupposes that financing also be undertaken locally. *See, e.g.*, Allen, *supra* note 24, at 56.

[34] See A.C. at ¶ 14.

[35] The court mentions the comparative taxable property valuation issue early in its opinion but then ignores it entirely in the opinion's governing pages, except for one reference: "The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using a hypothetical valuation." (Pl. App. at 11). The court does not explain what it means by "effectively tempers." Since the court elsewhere notes that the average per pupil expenditure in Illinois on a district-by-district basis is $840, a system which guarantees each district $400 per pupil hardly "effectively tempers" the inequalities existing between the poorest district and the average district, much less the richest district. In short, this statement by the lower court is demonstrably wrong.

for Plaintiffs' education, have any rational relationship to the valid purposes of public education.

If the State were to appropriate monies from general revenue for purposes of education it could not, consistently with the Fourteenth Amendment, distribute that revenue to local districts on the sole basis of the value of the property within each district. Such a discriminatory distribution of State funds would be unconstitutional because it would have no rational relationship to the education of all the students in the State.

As this Court has already established: "Such an [educational] opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954). A system whereby children living in districts with less valuable taxable property receive substantially less funds for their education than those living in districts containing more valuable taxable property does not make education "available to all on equal terms." Moreover, to the extent that a distribution of public funds results in giving less to the poor, "lines drawn on the basis of wealth or property, like those of race (citation omitted) are traditionally disfavored." *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 668 (1966). We submit that no State can Constitutionally link the education it provides for each child to the sole basis of the value of taxable property in his school district. *Compare Harper, supra*, at 666, where this Court struck down a state poll tax on the ground that "voter qualifications have no relation to wealth nor to paying or not paying this or any other tax."

Since the State could not discriminate directly against students residing in poorer localities, it should not be permitted to accomplish the same result by dividing its responsibility for equal education with local school districts and failing to supplement the funds raised by the school districts sufficiently to eliminate discrimination. The obli-

gation to provide an education for its citizens rests upon the *State* by operation of *its* constitution.[36] Further, as the facts reviewed in the Statement, above, demonstrate, the State plays a vital role in financing education for all children. State statutes bar any district from taxing its property at a rate higher than a specified maximum, regardless of how greatly the local district might wish to compensate for a low tax base. Likewise, they establish maximum limitations on the indebtedness a local district may incur, despite the fact that the State furnishes no funds for capital purposes. Finally, the State provides from the general revenues about 20% of all funds expended for public education in Illinois. Accordingly, there would be no merit in any contention by the State that it leaves public financing in the hands of its local subdivisions.[37]

In *Griffin* v. *County School Board*, 377 U.S. 218 (1964), the Court struck down a Virginia statute which permitted abdication of State duties by authorizing individual counties to determine whether or not to operate a public school system within their boundaries. While the case turned on a determination that the purpose and effect of the statute was to permit localities to avoid the impact of the desegregation requirement of *Brown*, the Court indicated that the decision by a State to treat one locality differently from another required Constitutionally acceptable reasons. We submit that a State determination which results in supplying one locality with less funds for education than another because it is poorer is not a Constitutionally acceptable reason under *Harper*, *supra*.[38]

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[36] *See* note 1, *supra*.

[37] *Compare* Vidich & Bensman, SMALL TOWN IN MASS SOCIETY 202-206 (Anchor ed. 1960) (discussing the importance of State aid to education in New York State).

[38] While a State may delegate certain of its functions to smaller subdivisions such as cities or counties, it cannot escape accountability for their actions. Such subdivisions are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The number, nature, and

It may be that the State wishes to finance public education primarily through property taxation, and that it is easier to administer such a tax system in the locale where the property is situated. However, this alleged convenience does not justify the discriminatory result apparent here when there are many equally viable tax systems which could achieve the same tax result without discrimination.[39] More importantly, even if the present system were, in some way, rational in the sense of "convenient," such a rational basis would be Constitutionally inadequate under the Fourteenth Amendment because of the substantial inequalities resulting from its use in an area involving basic human rights.

The court below, while conceding that "the inequalities of the existing arrangement are readily apparent" (Pl. App. at 7), upheld the Illinois practice on the grounds that it was neither wholly "arbitrary" nor unsupported by a "rational" policy. (*Id.* at 10-13). The court gathered these standards from cases involving Equal Protection challenges to questions of taxation or economic regulation.[40]

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duration of [their] powers . . . and the territory over which they shall be exercised rests in the absolute discretion of the State." *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 178 (1907).

[39] There are several alternatives to the present system which are also administratively convenient: Illinois could set a statewide uniform property tax rate as it now sets a maximum rate, collect the taxes so levied, and return them to the localities on an equal per pupil basis.

Or the State could compute the figure representing the average per pupil tax base for the State and support each district from a combination of state and local funds so that for equal local effort every school district would have the same expenditure level if it made the same effort.

It is not apparent how either method, which would incidentally result in vastly more equal funding throughout the State, is any less "convenient" than the present system of local taxation and retention of the funds raised thereby, coupled with supplemental State payments on a flat grant or equalizer basis.

[40] *E.g.*, *Allied Stores* v. *Bowers*, 358 U.S. 522 (1959); *Metropolitan Ins. Co.* v. *Brownell*, 294 U.S. 580 (1935); *Metropolis Theatre Co.* v. *Chicago*, 228 U.S. 61 (1913).

While Amici maintain that even by those standards the Illinois practices are defective, the Constitutional inquiry need not be so strictly limited because recent decisions of this Court clearly indicate that when challenged State practices tread unequally on essential human rights[41] and especially when further, they in fact redound to the disadvantage of the poor,[42] a more thorough judicial review of the Constitutional validity of the policies supposedly supporting the classification is required: testing whether those policies are adequate in light of the harm inflicted. This principle, a wise advance over the simplistic and mechanical quality of the "invidious discrimination" formula, was implicit in many of these decisions[43] and now has been affirmed more clearly still in the area of voting: "States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State," *Carrington* v. *Rash*, 380 U.S. 89, 96 (1965); "this does not necessarily mean that . . . [the] plan is irrational . . . we conclude simply that . . . [it] is impermissible for the States under the Equal Protection Clause," *Reynolds* v. *Sims*, 377 U.S. 533, 575 (1964);[44] "in determining whether or not a State law

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[41] *E.g.*, *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

[42] *E.g.*, *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); *Douglas* v. *California*, 372 U.S. 353 (1963); *Griffin* v. *Illinois*, 351 U.S. 12 (1956).

[43] *See generally* Horowitz & Neitring, Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State, 15 U.C.L.A. L. Rev. 787 (1968).

[44] The court below found *Reynolds* inapplicable on the ground that the case "strengthened citizens' voting rights because the Constitution specifically enfranchises all citizens equally, not as a result of general antipathy to historic geographical divisions." (See Pl. App. at 15). Actually, however, the Constitution confers in terms no right or equal right to vote; rather, voting—just as education— is simply one of those interests protected against unduly unequal treatment by the Equal Protection Clause of the Fourteenth Amendment.

violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification," *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968).

The right to education in a State which provides public education is an essential legal right to be accorded the same Constitutional protection as the other rights referred to above. The aspirations and character of every individual are thoroughly dependent on the education he is able to acquire. Education, like free speech and voting, lies near the heart of the democratic enterprise.[46] For the law's recognition of these educational values, there is no better citation than the familiar passage in this Court's historic opinion in *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954):

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

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[45] For indications of the relevance of available alternatives in the area of education, *see Green* v. *County School Board*, 391 U.S. 430, 439 (1968).

[46] It is for these reasons that States require that individuals undergo education, and that courts uphold these requirements. *Meyer* v. *Nebraska*, 262 U.S. 390, 402 (1923).

Accordingly, when a State provides public education unequally, courts should not deny Plaintiffs a trial on the merits merely because they can imagine some hypothetical rationale for the State's actions which may not be supported by the facts as proved. Since the court below made this error and thereby failed to apply the appropriate Equal Protection standards, Amici urge that this Court remand the case to the court below with instructions to apply the proper standards to the facts of this case.[47]

II. The Case Is Not Nonjusticiable Because Of A Lack Of Judicially Manageable Standards.

In dismissing the Plaintiffs' case for failure to state a cause of action, the lower court also asserted that no standard of public educational equality could be judicially defined should the existing Illinois statutes be found invalid. Thus, without correctly postulating the central constitutional wrong in issue (inequality resulting from dependence for educational funding upon local districts with unequal property tax bases), the court hypothesized inability in any event to define the applicable Constitutional remedy. However, this Court has often held that where a State law transgresses the Equal Protection Clause, courts will so rule without defining to the legislature alternative measures which would meet Constitutional requirements. *See, e.g., Williams* v. *Rhodes*, 393 U.S. 23, 34 (1968); *Baker* v. *Carr*, 369 U.S. 186 (1962).

[47] Should this Court feel unprepared to decide this issue, in effect "in the first instance," "unillumined by the consideration of a single judge" below, *United States* v. *International Union*, 352 U.S. 567, 591 (1957), it might well consider a remand to the district court with instructions that that court fully consider and assess the Constitutional significance of the allegation that Plaintiffs' major school inequalities stem from nothing but inter-district inequalities in property value. "We are in accord with the [Court's] view that it is inexpedient to determine grave constitutional questions on a demurrer to a complaint . . . if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer." *Borden Farm Products, Co.* v. *Baldwin*, 293 U.S. 194, 213 (1934) (Stone and Cardozo, JJ., concurring).

Thus, the degree and character of the irrational inequalities in educational financing, demonstrable in the present case, can result in a finding that Equal Protection has been breached, while still leaving the legislatures free to adopt ameliorative measures such as school district apportionment, school fund supplements, or reallocation of locally raised taxes, which would conform with Equal Protection guarantees.

Partly because it failed to apply the appropriate Equal Protection standards, the court below apparently felt that it would become embroiled in day-to-day school administration if it decided that Plaintiffs had stated a cause of action. Yet, it is clear that such involvement is unnecessary to a resolution of *this* case favorable to Plaintiffs. This Court is not required to select the standard considered and rejected by the court below: expenditure tied to educational "need." Instead, the scope of potential remedies is broad and easily manageable by a legislature. Essentially what is required is an effort by a State to allocate educational financial resources in a manner rationally related to the goals of education and consistent with the Equal Protection Clause of the Fourteenth Amendment.

While equal dollar expenditure per pupil is one possibility that a legislature might adopt, a legislature might also rationally, and nondiscriminatorily, conclude that disadvantaged or gifted children require more education and should receive more funds than others. A legislature could rationally authorize expenditures for pilot projects in some districts for experimental purposes without authorizing a similar project in all others. It could determine that costs were higher in some areas of the State and, accordingly, supply more funds per pupil. The legislature could, in short, allocate public funds differentially in all the different ways the district court suggests. (Pl. App. at 9). What it could not do is to continue to have those funds allocated irrationally and arbitrarily by sole

reference and in proportion to school district property values.

If the court below believed, as it seemed to, that the Constitutional standard Plaintiffs sought required that the citizens of any local area be limited in the amount of funds they could freely choose to spend on public education, it was in error. On the contrary, as the court's own opinion reveals, Plaintiffs suggested a method that would permit unlimited local effort on behalf of education, while in no way discriminating against poorer districts making an equal effort.[48] Further, other equally effective methods of preserving local effort are also available (*see* J.S. at 15).

Hence, because there are judicially manageable standards to govern the instant case, Amici contend that the case is justiciable.

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[48] "[T]he state could siphon off all money in excess of $x per pupil which was produced by a given tax rate, in effect eliminating variations in local property values while leaving the districts free to establish their own tax rate. . . . For example, if a district only levied a 1% tax rate, it could keep only $400 per pupil, regardless of the absolute dollars produced. On the other hand, the state would also guarantee $400 per pupil to units imposing to 1%. At higher rates, such as 4%, the state would thus substantially aid districts with low valuations, deriving most of its funds from wealthy districts which produced far more than $400 per pupil by a 1% rate." [See Pl. App. at 8 and n. 15].

CONCLUSION

For the reasons stated above, Amici respectfully suggest that this Court adopt either of two methods to dispose of the instant case. First, if this Court feels that no further briefing or oral argument is appropriate at this pleading stage, it should note probable jurisdiction and summarily reverse and remand the case for trial on the merits.[49] Second, if this Court wishes further briefs and oral argument on the appropriate Constitutional standards governing this controversy, it should also note probable jurisdiction, receive those briefs and arguments, and then remand the case to the court below for a full trial on the merits governed by the standards to be set forth by this Court.

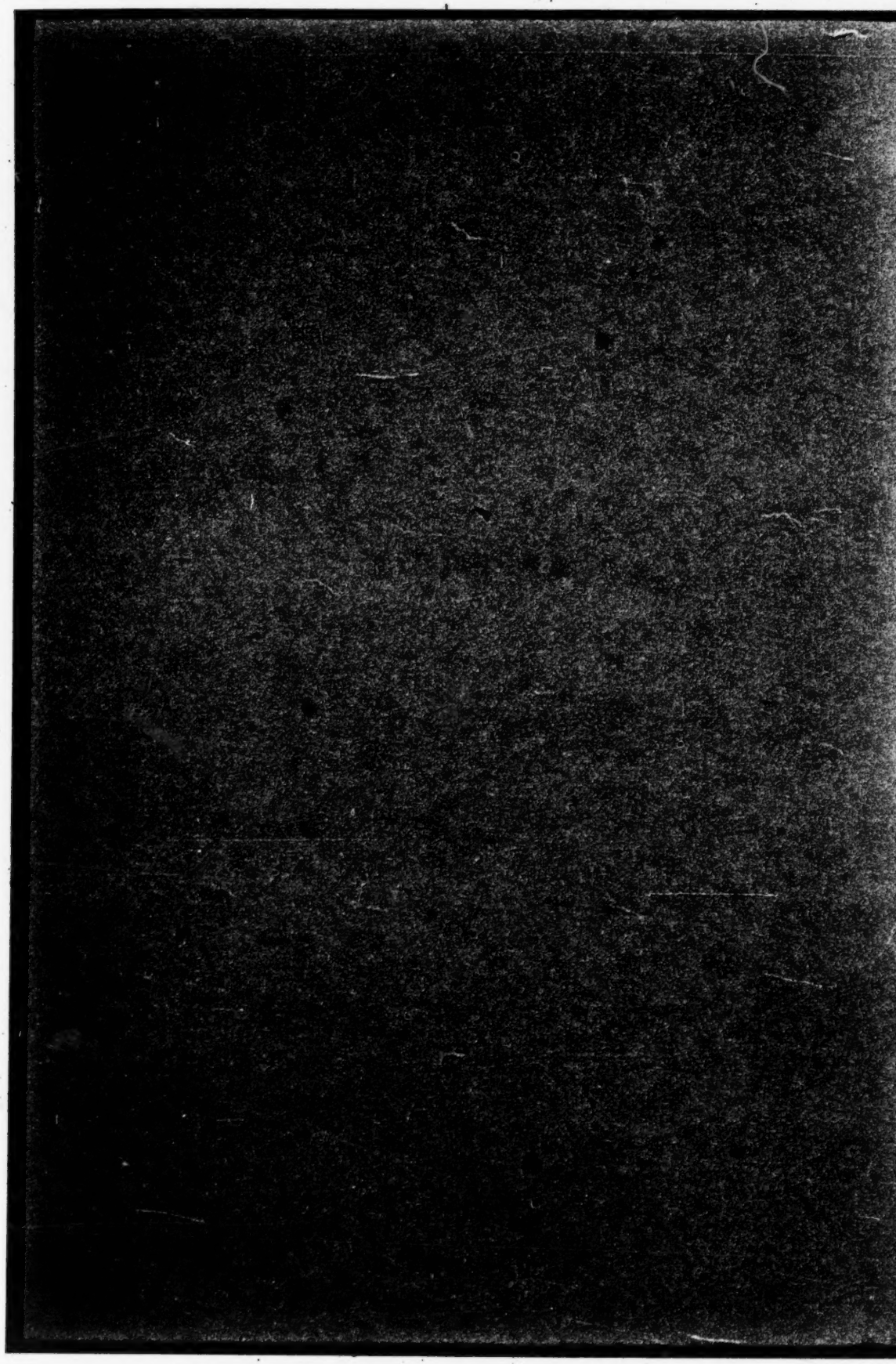
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[49] See note 47, *supra*.



APPENDIX

THE EFFECT OF THE ILLINOIS SCHOOL REVENUE SYSTEM IN CURRENT USE

In order to demonstrate specifically the operation of the Illinois school financing scheme, this Appendix compares the funding potential of four unit school districts, Monticello and Brookport, with respective per pupil tax bases of $114,000 and $3,000,[1] and Model Districts A and B, with respective per pupil tax bases of $40,000 and $10,000:[2]

(1) The initial source of revenue is a local property tax computed at a tax rate set by each local school district, subject to the 4.0% maximum limit for unit districts established by Ill. Rev. Stat. ch. 122, § 17-3 (1967).[3] Assuming that both districts place equal value upon quality education and elect to tax at 1%, the following chart illustrates the resultant local funds.

	tax base per pupil	tax rate	funds per child
Monticello	$114,000	1%	$1,140
Brookport	$ 3,000	1%	$ 30
Model District A	$ 40,000	1%	$ 400
Model District B	$ 10,000	1%	$ 100

Because of the statutory limitation on tax rate, Brookport, no matter how highly it values education, is prevented from raising more than $120 per pupil from local revenues for current expenditures, while District B can raise only $400.

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[1] The figures used herein are taken from the TASK FORCE REPORT at 115 (Table 17).

[2] Monticello and Brookpart are the extremes; the bulk of pupils live in districts with a range of per pupil tax bases between Model Districts A and B.

[3] Illinois law also equalizes the *rate* at which property values may be assessed throughout the State. Ill. Rev. Stat. ch. 120, §§ 627 *et seq.* (1967).

(2) An additional source of revenue is the State flat grant, which provides $54.05 per high school pupil to each district maintaining a high school ($47 per elementary school student). Since all four districts are unit districts, the following chart will show the effect of the flat grant on high school revenues [4]:

	local funds raised under (1)	State grant under (2)	total per high school pupil (1) plus (2)
Monticello	$1,140	$54.05	$1,194.05
Brookport	$ 30	$54.05	$ 84.05
Model District A	$ 400	$54.05	$ 454.05
Model District B	$ 100	$54.05	$ 154.05

Thus, each district receives $54.05 regardless of the relative wealth of each.

(3) Additionally, the State has adopted an "equalizer" grant system which assures each district of $400 per pupil if it taxes itself at a qualifying rate of 1%. The following chart shows how the qualifying rate is applied and the equalizer grant computed.

	tax base	theoretical tax rate	theoretical amount locally raised	State flat grant	sub-total	State "equalization" grant
Monticello	$114,000	1%	$1,140.00	$54.05	$1,194.05	$ 0
Brookport	$ 3,000	1%	$ 30.00	$54.05	$ 84.05	$315.95
Model District A	$ 40,000	1%	$ 400.00	$54.05	$ 454.05	$ 0
Model District B	$ 10,000	1%	$ 100.00	$54.05	$ 154.05	$245.95

Thus, regardless of the rates at which they tax, Brookport will receive $315.95 per pupil from the State in equalization grants, District B will receive $245.95, and Monticello and District A will receive nothing.

[4] Similar results will be obtained when revenue available for elementary school purposes is computed and the $47 flat grant is used.

The total amount of State aid is computed by adding the flat and equalizer grants. Thus, Brookport receives yearly per pupil grants of $370.00 ($315.95 under (3) plus $54.05 under (2)), District B receives $300.00 ($245.95 under (3) plus $54.05 under (2)); whereas Monticello and District A receive $54.05 (nothing under (3) plus $54.05 under (2)).

As the following charts show, property-poor districts cannot, by making equal or even significantly greater efforts, achieve access to funds equal to those available in wealthy districts:

	total state grants	tax base	local tax rate	local funds	total funds
Monticello	$ 54.05	$114,000	1%	$1,140	$1,194.05
Brookport	$370.00	$ 3,000	1%	$ 30	$ 400.00
Model District A	$ 54.05	$ 40,000	1%	$ 400	$ 454.05
Model District B	$300.00	$ 10,000	1%	$ 100	$ 400.00

Thus, where both districts are making equal efforts the total funds available to Monticello are nearly three times those available to Brookport. Further, Brookport is limited in its access to funds regardless of the rate at which it chooses to tax. The problem is illustrated by assuming Brookport and District B to tax at the maximum rate allowed by the State, and Monticello and District A, to tax significantly below that rate:

	total state grants	tax base	local tax rate	local funds	total funds
Brookport	$370.00	$ 3,000	4.0%	$ 120	$ 490.00
Monticello	$ 54.05	$114,000	1.0%	$1,140	$1,194.05
Model District A	$ 54.05	$ 40,000	2.0%	$ 800	$ 854.05
Model District B	$300.00	$ 10,000	4.0%	$ 400	$ 700.00

Brookport and Model District B, taxing themselves at the maximum allowed (4%), can under no circumstances raise as much per pupil, regardless of the value they place upon good schools, as Monticello and Model District A taxing themselves at substantially lower rates.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1033

LINDA Mc INNIS, a minor, by **CLOTEE Mc INNIS**, her mother and next friend, **MATTHEW V. BOWDEN**, a minor, by **MRS. FLORENCE JOHNSON**, his mother and next friend, **LAVERN SMITH**, a minor, by **BERNICE SMITH**, his mother and next friend, **KIMBERLY RAE COBLER**, a minor, by **RALPH COBLER**, her father and next friend, **MARK FIELDS**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **WILLIAM ALEXANDER**, a minor, by **MRS. LOUISE ALEXANDER**, his mother and next friend, **VIRGINIA RUTH SCRUGGS**, a minor, and **MRS. VIRGINIA SCRUGGS**, her mother and next friend, all suing as individuals and as representatives of persons similarly situated, and, Concerned Parents and People of the West Side, suing in behalf of the members of the class,

Plaintiffs-Appellants,

vs.

RICHARD B. OGILVIE, Governor of the State of Illinois, RAY PAGE, Superintendent of Public Instruction of the State of Illinois, ADLAI E. STEVENSON III, Treasurer of the State of Illinois, MICHAEL J. HOWLETT, Auditor of the State of Illinois,

Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division

MOTION TO AFFIRM

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Appellees Richard B. Ogilvie, Governor of the State of Illinois, Ray Page, Superintendent of Public Instruction of the State of Illinois, Adlai E. Stevenson III, Treasurer of the State of Illinois, and Michael J. Howlett, Auditor of the State of Illinois, pursuant to Rule 16 of the Revised Rules of the United States Supreme Court move that the final judgment and decree of the District Court be affirmed on the ground that the decision of the Federal District Court for the Northern District of Illinois is clearly correct and therefore it is manifest that no question so substantial as to warrant further argument is raised.

THE ISSUES PRESENTED

1) Does the method of financing public education in the State of Illinois as presently provided for by the laws of the said State violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution?

2) Is the controversy justiciable?

STATEMENT OF THE CASE

The Illinois General Assembly in fulfilling its Constitutional obligation to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education": (1) delegates to the local school districts authority to raise funds by levying an annual tax for educational and building purposes upon all property at its full value as equalized or assessed by the Illinois Department of Revenue; (2) authorizes school districts to issue, subject to approval at a referendum, bonds for purchasing, building, repairing schools and school property; and (3) provides for

a Common School Fund upon which the local districts may make claims to supplement educational expenditures. Ch. 122, Sec. 17-1 *et. seq.*; 18-1 *et. seq.*; 19-1 *et. seq.*; 34-1 *et. seq.* Ill. Rev. Stat. (1967).

LOCAL EFFORT

The State of Illinois limits tax rates that may be imposed for educational and school building purposes. Additional tax levies for educational purposes may be authorized by referendum but the total levies for educational purposes may not exceed 2% for districts maintaining grades 1-8 or 9-12, 4% for districts maintaining grades 1-12 and 2.01% for the Chicago Board of Education upon the cash value of property as assessed or equalized by the Department of Revenue. (Ch. 122, Secs. 17-3, 34-54, Ill. Rev. Stat. (1967)). School districts other than Chicago may also levy additional funds: (1) for capital improvements; and (2) to defray transportation and summer school expenses. Ch. 122, Sec. 17-2, Ill. Rev. Stat. (1967).

The local property tax rate for school purposes is the quotient of the annual school budget as proposed by the local boards and the assessed valuation of property within the district as assessed by the local county assessors and equalized by the Department of Revenue. If county valuations do not meet the estimated valuations of the Department of Revenue, an equalization multiplier is applied to adjust the valuations. The quotient of the school budget and the equalized valuation multiplied by $100 is the tax rate per $100 of equalized or assessed valuation.

BONDS

School districts are permitted to issue bonds for capital improvements and additions when authorized by a local referendum. The interest payable is limited according to the size of the school district. Districts may also issue bonds to refund an existing indebtedness, to provide for exhibition facilities and a working cash fund. However, the amount of bonds outstanding may never exceed 5% of the assessed valuation of taxable property within any local unit of government. Art. IX, Sec. 12. Ill. Cons.; Ch. 122, Sec. 19-1, 34-22, *et. seq.*, Ill. Rev. Stat. (1967).

COMMON SCHOOL FUND

The state through a Common School Fund pays claims to school districts as flat grants and equalization quotas after disbursements for: (1) tuition of children in orphanages and children's homes, veterans' hospitals or military encampment areas or in state housing units; (2) tax equivalent grants to districts where state institutions are located; (3) compensation of county superintendents and assistants; (4) supervisory expense fund; and (5) payments to the teachers' retirement system (outside of Chicago). Ch. 122, Sec. 18-3 through 18-7, Ill. Rev. Stat. (1967).

Each school district receives a flat grant for each pupil in average daily attendance. The district receives $47 for each pupil in kindergarten and elementary school in average daily attendance and $54.05 for each pupil in high school in average daily attendance. The state through an equalization plan guarantees a sum sufficient to produce $400 for each student in average daily attendance when aggregated with the local levy produced

by a minimum qualifying tax and the flat grant. This sum is paid to each qualifying school district which demonstrates a quality educational program. Ch. 122, Sec. 18-8, Ill. Rev. Stat. (1967).

The minimum qualifying tax depends on the type of school districts, e. g., unit or high school only. The qualifying tax encourages the local districts to make a major effort in financing its school programs.

The financial needs of most school districts exceed $400 per pupil, consequently the tax rates generally exceed the rate necessary to qualify for equalization. Additional levies are raised by referenda requesting an increase in the rate for educational purposes.

Claims for state aid are submitted by the school boards of each district to the county superintendents of schools who in turn certifies the claims to the Superintendent of Public Instruction. Ch. 122 Sec. 18-12 *et. seq.* Ill. Rev. Stat. (1967).

SPECIAL EDUCATIONAL FACILITIES

The General Assembly appropriates funds for special educational facilities for handicapped children (either physically, mentally or both), maladjusted children and speech defective children. Scholarships and grants are also available to persons interested in working with handicapped children. Professional personnel such as social workers and psychologists are assigned to these Facilities and paid out of special funds. Ch. 122, Sec. 14-A, Ill. Rev. Stat. (1967).

OTHER PROGRAMS

The state also has promulgated special programs for gifted and educationally disadvantaged children. Ch. 122, Secs. 14-A, 14-B, Ill. Rev. Stat. (1967). Funding of the program for educationally disadvantaged children is through participation in the Elementary and Secondary Education Act of 1965. (ESEA). P.L. 89-10; 20 U.S.C. Sec. 236 *et seq.* Financial assistance to local school districts for the education of children in low income areas is provided by Title I of ESEA on the basis of the number of children in families with annual income below $2,000 or above $2,000 with participation in Aid to Dependent Children programs; Title II provides grants for the acquisition of school library resources, textbooks and other printed and published material; Title III provides grants to local public school districts to finance supplemental educational centers and to enrich experiences and opportunities for elementary and secondary students.

ARGUMENT

I.

THE METHOD OF FINANCING PUBLIC EDUCATION IN THE STATE OF ILLINOIS DOES NOT VIOLATE THE EQUAL PROTECTION OR DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The two basic features of the Illinois school financing scheme are (1) delegation of authority to local school districts to raise funds by levying an annual tax upon all property within the district, and (2) creation of a common school fund upon which the districts may make plans to supplement for educational expenditures.

At present, the Illinois State Legislature has determined that a minimum of $400 per pupil is the foundation level necessary to provide "a good common school education." The thrust of plaintiffs' complaint is that this minimum is too low. Plaintiffs concede that it is not necessary that the dollar expenditure for each pupil need be the same in order to comply with constitutional requirements. It is the range of the disparity between the pupil expenditures that exists between the various districts of which plaintiffs complain. We submit that this is a question for the Legislature of the State of Illinois to determine, not a question for the courts to decide. Disparity alone does not amount to an "invidious discrimination". [*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955)]. Disparities and differences in treatment only run afoul the Constitution when the state statute can be said to reflect no rational policy. [*Metropolis Theatre*

Co. v. *Chicago,* 228 U.S. 61, 69-70, (1913); *McGowan* v. *Maryland,* 366 U.S. 420 (1961)]. As the court below noted, the Illinois Legislature has been constantly upgrading the quality of education in Illinois. *McInnis* v. *Shapiro,* [293 F. Supp. 327, 334, (1968)]. The disparity of which plaintiffs complain is constantly diminishing as the foundation level per pupil is increased and as the school districts are consolidated. The fact that alternatives to the present scheme may exist does not in itself render the present system unconstitutional. In *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 487-88 (1955), this Court said:

> ". . . But that the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."

In conceding that the per pupil expenditure need not be identical, the plaintiffs thereby concede that the proper and only remedy available to them is to resort to the Legislature to request still further reductions in the disparities that exist. The amended complaint of the plaintiffs states no cause of action and seeks no remedy which the courts can afford.

II.

THE CONTROVERSY IS NOT JUSTICIABLE.

Plaintiffs seek to void the method of raising and disbursing funds for school purposes adopted by the Illinois Legislature. The Legislature has determined that the residents of each school district can best determine the educational needs of the children in their district. They are best able to determine how many dollars per pupil

are necessary to be spent in their area to meet the educational needs of their children. The Legislature has recognized that some districts may not be able to raise through taxation or otherwise sufficient funds to afford a good common education for their children and has in the exercise of its Legislative discretion determined that the minimum expenditure per pupil in any district should be $400. It has created a common school fund from which this minimum dollar expenditure is met. In *LeBeauf* v. *State Board of Education of Louisiana*, 244 F. Supp. 256, 260 (1965), it was held:

> "There simply is no right, privilege, or immunity secured to these plaintiffs by the Constitution and laws of the United States being in any way denied by these respondents when they allocate and disburse funds . . ."

In *Hess* v. *Mullaney*, 213 F. 2d 635-640 (1954), it was similarly held:

> "No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds."

As the court below found, at page 335;

> "Even if the Fourteenth Amendment required that expenditures be made only on the basis of pupils' educational needs, this controversy would be non-justiciable. While the complaint does not present a 'political question', in the traditional sense of the term, there are no 'discoverable and manageable standards' by which a court can determine when the Constitution is satisfied and when it is violated."

The alternative methods of financing suggested by the plaintiffs do not offer manageable standards that could be enforced by a court which would in any way better

insure an adequate education for the pupils of their district than has already been fashioned by the Illinois Legislature.

The best that any alternative would do, would be to lessen the disparity between per pupil expenditure or equalize such expenditure. We submit that to adopt the suggestions of the plaintiffs would not result in better meeting their educational needs but would merely tend to lessen the quality of education throughout the State of Illinois.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the decision of the Federal District Court should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

October Term, 1968.

McINNIS ET AL. *v.* OGILVIE, GOVERNOR, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 1033. Decided March 24, 1969.

PER CURIAM.

The motions of Urban Coalition, et al., American Federation of Labor-Congress of Industrial Organizations, et al., John E. Coons, et al., and San Francisco Neighborhood Legal Assistance Foundation, et al., for leave to file briefs, as *amici curiae*, are granted.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted and the case set for oral argument.